

CONTENTS

Title	Page
50. Municipal Corporations	1
51. Notaries Public and Commissioners of Deeds	425
52. Nuisances	439
53. Partnership	465
Index	727



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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 50-53

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PUBLISHER'S NOTE

Since the publication in 2000 of former Replacement Titles 50 to 53, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, Replacement Titles 50 to 53 are issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of April 12, 2009. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009

TABLE OF CONTENTS

TITLE 50

MUNICIPAL CORPORATIONS

Chapter	Sections
1. Manner of Original Incorporation — Organization	§§ 50-101 — 50-104
2. General Provisions — Government — Territory	§§ 50-201 — 50-237
3. Powers	§§ 50-301 — 50-345
4. Municipal Elections	§§ 50-401 — 50-479
5. Initiative — Referendum — Recall	§§ 50-501 — 50-517
6. Mayor	§§ 50-601 — 50-612
7. Council	§§ 50-701 — 50-708
8. Council-Manager Plan	§§ 50-801 — 50-813
9. Ordinances — City Code — Records	§§ 50-901 — 50-910
10. Finances	§§ 50-1001 — 50-1049
11. Planning Commission	[Repealed]
12. Zoning	[Repealed]
13. Plat and Vacations	§§ 50-1301 — 50-1334
14. Conveyance of Property	§§ 50-1401 — 50-1409
15. Policeman's Retirement Fund	§§ 50-1501 — 50-1526
16. Civil Service	§§ 50-1601 — 50-1610
17. Local Improvement District Code — Guarantee Fund	§§ 50-1701 — 50-1772
18. City Irrigation Systems	§§ 50-1801 — 50-1835
19. Housing Authorities and Cooperative Law	§§ 50-1901 — 50-1927
20. Urban Renewal Law	§§ 50-2001 — 50-2032
21. Consolidation of Cities	§§ 50-2101 — 50-2114
22. Disincorporation Procedure	§§ 50-2201 — 50-2214
23. Reorganization of Cities Under General Laws	§§ 50-2301 — 50-2308
24. Police Courts	[Repealed]
25. Underground Conversion of Utilities	§§ 50-2501 — 50-2523
26. Business Improvement Districts	§§ 50-2601 — 50-2624
27. Municipal Industrial Development Program	§§ 50-2701 — 50-2723
28. Idaho Private Activity Bond Ceiling Allocation Act	§§ 50-2801 — 50-2805
29. Local Economic Development Act	§§ 50-2901 — 50-2912
30.	[Reserved]
31. Community Infrastructure District Act	§§ 50-3101 — 50-3121

TITLE 51

NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

Chapter	Sections
1. Idaho Notary Public Act	§§ 51-101 — 51-123
2. Commissioner of Deeds	[Repealed]

TITLE 52

NUISANCES

Chapter	Sections
1. Nuisances In General	§§ 52-101 — 52-111
2. Public Nuisances	§§ 52-201 — 52-206
3. Private Nuisances	§§ 52-301 — 52-303
4. Moral Nuisances — Actions for Injunction and Abatement	§§ 52-401 — 52-417

TITLE 53

PARTNERSHIP

Chapter	Sections
1. Special Partnership	[Repealed]
2. Uniform Limited Partnership Act	§§ 53-2-101 — 53-2-1205
3. Uniform Partnership Law	§§ 53-301 — 53-3-1205
4. Mining Partnership	§§ 53-401 — 53-412
5. Assumed Business Names	§§ 53-501 — 53-511
6. Idaho Limited Liability Company Act [Repealed effective July 1, 2010]	§§ 53-601 — 53-672
7. Uniform Unincorporated NonProfit Association Act	§§ 53-701 — 53-717

TITLE 50

MUNICIPAL CORPORATIONS

CHAPTER.

1. MANNER OF ORIGINAL INCORPORATION — ORGANIZATION, §§ 50-101 — 50-104.
2. GENERAL PROVISIONS — GOVERNMENT — TERRITORY, §§ 50-201 — 50-237.
3. POWERS, §§ 50-301 — 50-345.
4. MUNICIPAL ELECTIONS, §§ 50-401 — 50-479.
5. INITIATIVE — REFERENDUM — RECALL, §§ 50-501 — 50-517.
6. MAYOR, §§ 50-601 — 50-612.
7. COUNCIL, §§ 50-701 — 50-708.
8. COUNCIL-MANAGER PLAN, §§ 50-801 — 50-813.
9. ORDINANCES — CITY CODE — RECORDS, §§ 50-901 — 50-910.
10. FINANCES, §§ 50-1001 — 50-1049.
11. PLANNING COMMISSIONS. [REPEALED.]
12. ZONING. [REPEALED.]
13. PLATS AND VACATIONS, §§ 50-1301 — 50-1334.
14. CONVEYANCE OF PROPERTY, §§ 50-1401 — 50-1409.
15. POLICEMAN'S RETIREMENT FUND, §§ 50-1501 — 50-1526.
16. CIVIL SERVICE, §§ 50-1601 — 50-1610.
17. LOCAL IMPROVEMENT DISTRICT CODE — GUARANTEE FUND, §§ 50-1701 — 50-1772.

CHAPTER.

18. CITY IRRIGATION SYSTEMS, §§ 50-1801 — 50-1835.
19. HOUSING AUTHORITIES AND COOPERATION LAW, §§ 50-1901 — 50-1927.
20. URBAN RENEWAL LAW, §§ 50-2001 — 50-2032.
21. CONSOLIDATION OF CITIES, §§ 50-2101 — 50-2114.
22. DISINCORPORATION PROCEDURE, §§ 50-2201 — 50-2214.
23. REORGANIZATION OF CITIES UNDER GENERAL LAWS, §§ 50-2301 — 50-2308.
24. POLICE COURTS. [REPEALED.]
25. UNDERGROUND CONVERSION OF UTILITIES, §§ 50-2501 — 50-2523.
26. BUSINESS IMPROVEMENT DISTRICTS, §§ 50-2601 — 50-2624.
27. MUNICIPAL INDUSTRIAL DEVELOPMENT PROGRAM, §§ 50-2701 — 50-2723.
28. IDAHO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT, §§ 50-2801 — 50-2805.
29. LOCAL ECONOMIC DEVELOPMENT ACT, §§ 50-2901 — 50-2912.
30. [RESERVED.]
31. COMMUNITY INFRASTRUCTURE DISTRICT ACT, §§ 50-3101 — 50-3121.

CHAPTER 1

MANNER OF ORIGINAL INCORPORATION — ORGANIZATION

SECTION.

- 50-101. Incorporation.
50-102. Manner of incorporating.

SECTION.

- 50-103. Census.
50-104. Proof of corporate existence.

50-101. Incorporation. — The residents of any unincorporated contiguous area (village) containing not less than 125 qualified electors may present a petition signed by a majority of the said electors to the board of commissioners of the county in which said petitioners reside, praying that they be incorporated as a city, designating the name they wish to assume and the metes and bounds of the proposed city.

Upon the petition to incorporate filed as herein provided, the board of county commissioners petitioned shall have no jurisdiction to take any action thereon or enter an order of incorporation, regardless of the number of petitioners thereon, where the boundaries of the proposed new city approach any point within one (1) mile of the boundary limits of any existing city of less than five thousand (5,000) population, within two (2) miles of the boundary limits of any existing city of five thousand (5,000) but less than ten thousand (10,000) population, within three (3) miles of the boundary limits of any existing city of ten thousand (10,000) but less than twenty thousand

(20,000) population, or within four (4) miles of the boundary limits of any existing city of twenty thousand (20,000) or more population, all populations as determined by the last official or special United States census, unless there is first furnished said board of county commissioners either (a) a certified copy of a resolution of the city council of any existing city within the above applicable distances of the proposed city approving said petition for incorporation, or (b) appropriate evidence that the city council of any existing city within the above applicable distances of the proposed city, if contiguous or adjacent, has rejected and refused to annex the area of the proposed city to the existing city upon the petition made as hereinafter set out. Where the proposed new city area lies within the applicable distance of one or more cities, all cities must approve the petition of incorporation. An existing city shall be deemed to have rejected and refused to annex the contiguous or adjacent area when a petition for annexation is filed prior to 90 days before the end of any fiscal year, and the city council, within 60 days after receipt of said petition has not by appropriate action, declared that such area will be a part of such existing city, effective not later than the last day of the fiscal year in which said petition was filed. Such petition shall be signed by a majority of the inhabitants paying real estate taxes within said area requesting annexation, contain a certain metes and bounds description of the area set out in the petition and certify that the area so described falls within the distance limits herein set forth. The existing city, the petitioners, as herein provided, or the board of county commissioners is granted the power to petition the district court for a declaration of the right on any disputes arising between any of the parties so named hereunder. [1967, ch. 429, § 1, p. 1249.]

STATUTORY NOTES

Cross References. — Annexation of adjacent territory, § 50-222.

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Section 474 of S.L. 1967, ch. 429 read: "If any section, subsection, subdivision, paragraph, sentence, part or provision of this act shall be found to be invalid or ineffective by

any court it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, subsection, subdivision, paragraph, sentence, part or provision and this act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid."

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

Requisite Filings.

When Acequia was incorporated as a village in 1952, the procedure was governed by former § 50-701. The statutes then in effect for "villages" contained no requirement of filing a proclamation declaring incorporation of a city with the secretary of state. So, since

this section and § 50-102 were not enacted until 1967, even though Acequia has not filed with the secretary of state a proclamation declaring incorporation of a city, Acequia was a duly formed city when the ordinances in question were enacted. *State v. Phillips*, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeals.
Collateral attack.
Construction.
Existence as unit.
Notice.
Order.
Petition.

Appeals.

Where board of commissioners in making an order incorporating a city found that proposed boundaries were reasonable, any person who was aggrieved thereby had his remedy by appeal, and incorporation would not be held void because boundaries were improperly fixed, in absence of any showing that boundaries so fixed included an unreasonable amount of land. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

Order for incorporation of a village was appealable to district court by any person aggrieved thereby or by any taxpayer within territory affected by such incorporation. *Gardner v. Blaine County*, 15 Idaho 698, 99 P. 826 (1909).

An appeal filed by city from order incorporating a village to which incorporation the city objected on the grounds that the proposed village contained fewer than 125 residents, that the proposed boundaries were irregular, bizarre and fantastic, that its incorporation would materially hamper the ordinary growth of the city would have been dismissed on the ground that the city was neither a "person aggrieved" by the order, nor a "taxpayer of the county" and therefore was not authorized to appeal under the provisions of former § 31-1509. *In re Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958).

Collateral Attack.

In action attacking validity of incorporation of a village on ground that petition praying for such incorporation was not signed by majority of taxable male inhabitants residing within boundaries of said village, it must affirmatively have appeared from proceedings attacking such incorporation that said petition was not signed by majority of such taxpayers. *In re Francis*, 7 Idaho 98, 60 P. 561 (1900).

Construction.

Provisions of former section authorizing incorporation of a village was to be liberally construed. *Village of Ilo v. Ramey*, 18 Idaho 642, 112 P. 126 (1910).

Existence as Unit.

Any area which was sought to be incorporated must have existed as a unit and constituted a village in fact. *In re Chubbuck*, 71 Idaho 60, 226 P.2d 484 (1950).

Notice.

Former section governing incorporation of villages did not provide for notice and none was required to be given to opponents of a proposed incorporation; further, the statute made it mandatory upon the county commissioners to create the village when petition therefor complied with statute and board was satisfied that a majority of the taxable inhabitants of the proposed village had signed the same and there were 125 or more inhabitants actually resident of the territory described in the petition. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

Order.

Fact that order of board of commissioners declaring town incorporated failed to designate metes and bounds of town did not affect legality of incorporation, where petition for incorporation clearly designated said boundaries and order referred to petition and granted it without change or modification. *State ex rel. Holcomb v. Inhabitants of Pocatello*, 3 Idaho 174, 28 P. 411 (1891).

Fact that order incorporating a city did not state that 200 or more inhabitants were legal residents of territory described in petition did not render order void where same uses words "taxable inhabitants," and shows that a sufficient number of taxable inhabitants signed petition. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

Petition.

Attempted incorporation of a town was void where petition for incorporation failed to describe metes and bounds of any tract of land whatever. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

Former section governing incorporation of villages was satisfied if the petition for incorporation which was introduced into evidence without objection set forth the metes and bounds of the proposed village. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

Withdrawal of names from a petition for incorporation of a proposed village on the plea that such signatures were made upon false information would not have been permitted where board of county commissioners had acted on such petition. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

If the district court found that the board of county commissioners did not abuse its discretion in granting one of the petitions for incorporation, then their order incorporating that area as a village should have been affirmed. In re Chubbuck, 71 Idaho 60, 226 P.2d 484 (1950).

Where there were two rival petitions for incorporation, one including the area in the other, the determination of whether a village in fact exists and its extent was first for the board of county commissioners and on review, the district court. In re Chubbuck, 71 Idaho 60, 226 P.2d 484 (1950).

50-102. Manner of incorporating. — When the provisions of section 50-101[, Idaho Code,] have been satisfied and the county board or a majority of the members thereof has been satisfied that 60 per cent of the qualified electors of the proposed city have signed such petition and that qualified electors to the number of 125 or more are actual residents of the territory described in the petition, the said board shall hold a public hearing upon said petition and fix a time and place therefor, not more than thirty (30) days from the filing of said petition, and cause notice thereof to be published twice prior to said hearing, in a newspaper of general circulation in said county and said board shall, on or before thirty (30) days following the date of said hearing, determine, by resolution, whether or not said proposed city may be incorporated and, in the event said board determines that the proposed city is to be incorporated, they shall enter the order of incorporation upon their records, and designate the metes and bounds thereof. Thereafter the said city shall be governed as other cities by the laws of the state of Idaho. The said county board shall, at the time of the incorporation: (1) proclaim that henceforth the former area shall be known as; (2) order the clerk of the board of county commissioners to certify a copy of such proclamation, which shall be filed with the office of the secretary of state; (3) appoint a mayor and either four (4) or six (6) councilmen having the qualifications provided in this act, who shall at that time subscribe to the oath, and after receiving a certificate of election, they shall assume their offices and perform all the duties required of them by law, until the next general city election succeeding their appointment and until their successors are elected and qualified. [1967, ch. 429, § 2, p. 1249.]

STATUTORY NOTES

Cross References. — Municipal elections, § 50-401 et seq.

Qualifications of councilmen, § 50-702.

Qualifications of mayor, § 50-601.

Compiler's Notes. — The bracketed insertion in the first sentence was added by the compiler.

The words "this act" refer to S.L. 1967, ch. 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

JUDICIAL DECISIONS

Requisite Filings.

When Acequia was incorporated as a village in 1952, the procedure was governed by former § 50-701. The statutes then in effect for "villages" contained no requirement of filing a proclamation declaring incorporation of a city with the secretary of state. So, since

this section and § 50-102 were not enacted until 1967, even though Acequia has not filed with the secretary of state a proclamation declaring incorporation of a city, Acequia was a duly formed city when the ordinances in question were enacted. *State v. Phillips*, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990).

50-103. Census. — Within 30 days following the proclamation of incorporation, the city council shall request that an official enumeration of the inhabitants of the newly incorporated city be taken by the bureau of census, U.S. department of commerce, for the purpose of ascertaining the population of said city, the results of which shall be certified to the offices of the county clerk and the secretary of state, and which shall then become the official census and be used for the purpose of apportioning any and all state collected moneys to said city until the next regular or subsequent census be taken. [1967, ch. 429, § 3, p. 1249.]

STATUTORY NOTES

Cross References. — Census authorized, § 50-214.

50-104. Proof of corporate existence. — All courts within the county in which such newly incorporated city is situated shall take judicial notice of the corporate capacity and existence of such city. In all other courts of the state the corporate capacity and existence of such city may be proved by copies of the certificate of incorporation filed with the office of the secretary of state, duly authenticated, declaring the same to be a city. [1967, ch. 429, § 4, p. 1249.]

STATUTORY NOTES

Cross References. — Proof of corporate existence, § 50-201.

JUDICIAL DECISIONS

Cited in: State v. Phillips, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990).

DECISIONS UNDER PRIOR LAW

Judicial Notice. Instruction that judicial notice could have been taken of fact that city in question in prosecution of city treasurer for embezzlement was a city of the second class was not erroneous. State v. Clark, 47 Idaho 750, 278 P. 776 (1929).

CHAPTER 2

GENERAL PROVISIONS — GOVERNMENT — TERRITORY

SECTION.	SECTION.
50-201. Proof of corporate existence — Effect of this act.	50-205. Refusal to confirm appointments — Vacancies.
50-202. Existing rights and liabilities not affected — Operation of prior incorporated cities and villages.	50-206. Removal of appointive officers.
50-203. Officials — Compensation.	50-207. Duties of the clerk — Journal — Administering oaths.
50-204. Appointment of officers — Oath — Bond.	50-208. Duties of treasurer — Record of outstanding bonds.
	50-208A. Duties of city attorney.
	50-209. Powers of policemen.

SECTION.

- 50-210. Boards — Commissions.
- 50-211. Supervision of elections. [Repealed effective January 1, 2011.]
- 50-212. [Repealed.]
- 50-213. Official newspaper.
- 50-214. Census authorized.
- 50-215. Prosecutions against corporations under city ordinance.
- 50-216. Compelling attendance of witnesses before council.
- 50-217. Payment of judgments.
- 50-218. Prohibition against recognition of invalid or stale claims.
- 50-219. Damage claims.
- 50-220. Acquisition and control of lands outside corporate limits — Purpose.
- 50-221. Cities situated on navigable lakes and streams — Extension of boundaries into waters.
- 50-222. Annexation by cities.
- 50-222A. [Repealed.]
- 50-223. Annexation ordinance to be filed.
- 50-224. Effect of annexation — Cemetery districts exempted.
- 50-225. Exclusion of territory.

SECTION.

- 50-226. Separation of agricultural lands — Petition.
- 50-227. Separation of agricultural lands — Notice of petition and hearing thereon.
- 50-228. Separation of agricultural lands — Reply to protests — Verification.
- 50-229. Separation of agricultural lands — Hearing.
- 50-230. Separation of agricultural lands — Judgment of separation.
- 50-231. Separation of agricultural lands — Liability for bonded indebtedness.
- 50-232. Separation of agricultural lands — Streets not affected by separation.
- 50-233. Separation of agricultural lands — Appeal.
- 50-234. Lease of mining property by city.
- 50-235. Tax levy for general and special purposes.
- 50-236. Capital improvement fund levy — Limitations.
- 50-237. Borrow money.

50-201. Proof of corporate existence — Effect of this act. — The corporate name of each city governed by this act shall be City of All courts within the county in which such city is situated shall take judicial notice of the corporate capacity and existence of such city, and of the fact that such city is identical with, and a continuation of such former corporation. In all other courts of the state the corporate capacity and existence of such city may be proved by copies of the certificate of incorporation, required to be filed with the secretary of state, duly authenticated, declaring the same to be a city.

All by-laws, ordinances and resolutions lawfully passed and in force in any city under its former organization, shall remain in full force and effect until altered or repealed by the mayor and council under the provisions of this act.

The territorial limits of each city shall remain the same as under its former organization; but such territorial limits may be extended or changed as may be provided by law; and the rights and property of every description which are vested in any city under its former organization shall remain in full force and effect.

Each city shall be the successor of its former organization and shall have perpetual succession. No right or liability of any city, either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change. It shall have and exercise all powers, functions, rights and privileges, now or hereafter granted it, and shall be subject to all the duties, obligations, liabilities and limitations now or hereafter imposed upon such city by the constitution and laws of the state of Idaho.

Processes and notices affecting corporations shall be served upon the mayor and in his absence upon the clerk or in the absence of such officers,

then by leaving a certified copy at the office of the clerk. [1967, ch. 429, § 5, p. 1249; am. 1982, ch. 121, § 1, p. 347.]

STATUTORY NOTES

Cross References. — City reorganized under general law, proof of corporate existence, § 50-2306.

Village incorporated as city, proof of corporate existence, § 50-104.

Compiler's Notes. — For meaning of "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Provisions of City Charter.

The Boise City charter and its amendments were special acts of the legislature and, therefore, were not included in the provision of the former law that "all by-laws, ordinances and

resolutions" in force in a city under its former organization remain in force until altered or repealed. *Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967).

50-202. Existing rights and liabilities not affected — Operation of prior incorporated cities and villages. — This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted [asserted], enforced, prosecuted or inflicted, as fully and to the same extent as if this act has not been passed.

All cities of the first class and all cities of the second class, heretofore incorporated under the general laws of this state, and heretofore operating with a mayor and council, shall continue to operate with a mayor and a council under the provisions of this act. All villages, heretofore incorporated under the general laws of this state, and heretofore operating with a board of trustees, shall hereafter operate with a mayor and a council under the provisions of this act. All cities and villages, heretofore incorporated under the general laws of this state, and heretofore operating under chapters 36, 43 or 49, title 50, Idaho Code, shall hereafter operate under sections 50-805 through 50-904 [sections 50-801 through 50-812, Idaho Code], and enjoy all powers and privileges given under the provisions of this act. [1967, ch. 429, § 473, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-201.

The bracketed word "asserted" in the first paragraph was inserted by the compiler, as the probable intended word.

The references to "chapters 36, 43 or 49, title 50, Idaho Code" near the end of the section are to those chapters of the former title 50 of the Idaho Code which were repealed by S.L. 1967, ch. 429, § 472. Such provisions

related to the commission plan, city manager plan and council-manager-mayor plan of government, respectively.

The reference to "sections 50-805 through 50-904" in this section (which appears in S.L. 1967, ch. 429, as a reference to sections 144 through 155) appears to be in error and, therefore, the bracketed reference to [sections 50-801 through 50-812, Idaho Code] has been inserted.

50-203. Officials — Compensation. — The officials of each city shall consist of a mayor and either four (4) or six (6) councilmen whose compensation shall be fixed by ordinance published at least seventy-five (75) days before any general city election, which ordinance shall be effective for all said officials commencing on January 1 following said election and continuing until changed pursuant to this section. [1967, ch. 429, § 33, p. 1249; am. 1976, ch. 45, § 8, p. 122; am. 2006, ch. 105, § 1, p. 288.]

STATUTORY NOTES

Cross References. — Qualifications, powers and duties of councilmen, § 50-701 et seq.

Qualifications, powers and duties of mayor, § 50-601 et seq.

Amendments. — The 2006 amendment, by ch. 105, substituted “published at least seventy-five (75) days” for “passed at least sixty (60) days.”

Compiler’s Notes. — Section 32 of S.L. 1976, ch. 45 read: “In order to provide an

orderly sequence for implementation of the provisions of this act: (a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977; (b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; (c) Sections 16, 17, 18, 19, 23, 24, 25, 28, and 29 shall be in full force and effect on and after October 1, 1977.”

JUDICIAL DECISIONS

Cited in: State v. Whelan, 103 Idaho 651, 651 P.2d 916 (1982).

50-204. Appointment of officers — Oath — Bond. — The mayor, except as otherwise provided in sections 50-801 through 50-812, with the consent of the council shall appoint a city clerk, a city treasurer, a city attorney and such other officers as may be deemed necessary for the efficient operation of the city. The city clerk, city treasurer, and such other officers as are designated by the council shall, before entering upon the duties thereof, execute a bond to the city in such penal sum as the city council may by ordinance determine, conditioned on the faithful performance of his duties. All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk, except the bond of the city clerk, which shall be filed with the mayor. [1967, ch. 429, § 68, p. 1249.]

STATUTORY NOTES

Cross References. — Mayor and council to fill vacancies in office, § 59-905.

Worker’s compensation applies to municipal officers and employees, § 72-205.

JUDICIAL DECISIONS

ANALYSIS

Police officers.
Presumption of official action.

Police Officers.

The historical progression of the relevant statutory sections shows the legislature’s intention to limit the officers required by statute to be appointed by the mayor with the consent of the city council. Police officers, once

included in the above category, are not expressly enumerated in the present version of this section, and the apparent legislative intent was to delete police officers from the requirement of mayoral appointment, with city council approval, applicable to other offic-

ers. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

Presumption of Official Action.

In a prosecution for resisting an officer in the performance of his duty, in the absence of a showing by the defendant that the city required police officers to post a bond, the

court had to presume that the two complaining officers had been properly appointed and were carrying out the duties of the office. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

Cited in: *Bunt v. City of Garden City*, 118 Idaho 427, 797 P.2d 135 (1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Policemen.

Removal.

Statute of limitations.

Policemen.

Under former section the mayor was authorized to appoint policemen by and with the consent of the council; this was the only method by which policemen of a city could be appointed. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

Removal.

No power exists to dismiss or discharge any elective officer. All officers having anything to do with streets and sidewalks were elective officers, except street commissioner, who was

appointed by and was under the direction and control of the board of trustees. *Miller v. Mullan*, 17 Idaho 28, 104 P. 660 (1909).

Statute of Limitations.

With respect to running of statute of limitations, cause of action on bond of city treasurer for money deposited without authority in bank which failed accrued when he failed to turn over funds of city at close of term. *City of St. Anthony v. Mason*, 49 Idaho 717, 291 P. 1067 (1930).

50-205. Refusal to confirm appointments — Vacancies. — If the city council shall refuse to confirm any nomination, the mayor shall then within ten (10) days thereafter, nominate another person to fill the office and he may continue to nominate until his nominee is confirmed. If the mayor fails to make another nomination for the same office within ten (10) days after the rejection of a nominee, the city council shall appoint a suitable person to fill the office during the term. The affirmative vote of one half (1/2) plus one (1) of the members of the full council shall be required to confirm any nomination made by the mayor. Whenever a vacancy shall occur in an appointive office, the vacancy for the unexpired term shall be filled by appointment in the same manner as the original appointment. [1967, ch. 429, § 69, p. 1249.]

50-206. Removal of appointive officers. — Any appointive officer, unless appointed under sections 50-801 through 50-812[, Idaho Code], may be removed by the mayor for any cause by him deemed sufficient; but such removal shall be by and with the affirmative vote of one half (1/2) plus one (1) of the members of the full council; provided, that the city council, by the unanimous vote of all its members, may upon their own initiative remove any appointive officer. [1967, ch. 429, § 70, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler.

JUDICIAL DECISIONS

Chief of Police.

The office of chief of police is an appointive office subject to this section's employment-at-will framework, and removal of the office

holder was, therefore, possible at the will of the employer, with no notice or hearing required. *Bunt v. City of Garden City*, 118 Idaho 427, 797 P.2d 135 (1990).

50-207. Duties of the clerk — Journal — Administering oaths. —

The city clerk shall keep a correct journal of the proceedings of the council and shall have the custody of all laws and ordinances of the city. He may administer oaths to any person concerning any matter submitted to him or the city council. He shall also perform such other duties as may be required by ordinance. [1967, ch. 429, § 71, p. 1249; am. 1976, ch. 49, § 1, p. 148; am. 1979, ch. 30, § 1, p. 246.]

STATUTORY NOTES

Cross References. — Annexed land, duty to record ordinance including legal description and map, § 50-223.

Entering call and objects of special meetings of city council on journal, §§ 50-604, 50-706.

Excluded land, duty to record ordinance

including legal description and map, § 50-225.

Filing copy of judgment separating agricultural lands, § 50-230.

Municipal elections, powers of clerk, § 50-404.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Duties of clerk.

Mandate to draw warrant.

Duties of Clerk.

City could have, by ordinance, added to duties of city clerk. *State v. Dawe*, 31 Idaho 796, 177 P. 393 (1918).

Mandate to Draw Warrant.

Where city council allowed a claim, if city

clerk refused to draw a warrant in payment thereof, he could be compelled by writ of mandate to do so; he had no discretion in premises; his duty was merely ministerial. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

50-208. Duties of treasurer — Record of outstanding bonds. —

The treasurer of each city shall be the custodian of all moneys belonging to the city; he shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto; he shall give a receipt to every person paying money into the treasury, thereon specifying the date of payment and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall at the end of each and every month and as often as may be required, render an account to the city council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office, and if said treasurer neglect or fail for the space of ten (10) days from the

end of each and every month, to render his said account, his office shall be declared vacant, and the city council shall fill the vacancy by appointment. He shall also keep a record of all outstanding bonds against the city showing the number, amount of each, and to whom said bonds were issued; and when any bonds are purchased, paid or canceled, said record shall show the fact. In his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of the sale with each and every item of expense thereof. [1967, ch. 429, § 72, p. 1249; am. 1976, ch. 49, § 2, p. 148.]

STATUTORY NOTES

Cross References. — Deposit of funds as provided by ordinance, § 50-1013.

Duty to publish quarterly financial statements, § 50-1011.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.
Statute of limitations.

Construction.

Former section governing duties of treasurer was not mandatory and self-executing to extent that it could have determined and declared existence of fact upon which law operates. Board must have first found fact to exist that treasurer had failed or neglected to make reports as required by law before they could have declared office vacant. *Kendrick v. Nelson*, 13 Idaho 244, 89 P. 755 (1907).

Statute of Limitations.

With respect to running of statute of limitations, cause of action on bond of city treasurer, for money deposited without authority in bank which failed, accrued when he failed to turn over funds of city at close of term. *City of St. Anthony v. Mason*, 49 Idaho 717, 291 P. 1067 (1930).

50-208A. Duties of city attorney. — (1) The city attorney shall be the legal advisor of the municipal corporation, may represent the city in all suits or proceedings in which the city is interested, and shall perform such other duties as may be prescribed by ordinances and resolutions duly passed. Nothing herein, however, shall preclude any city from employing alternative additional counsel when deemed advisable.

(2) The city attorney, his deputies, or contract counsel shall prosecute those violations of county or city ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits. In so doing, the city attorney, his deputies, or contract counsel shall exercise the same powers as the county prosecutor including, but not limited to, granting immunity to witnesses. [I.C., § 50-208A, as added by 1989, ch. 292, § 2, p. 719.]

OPINIONS OF ATTORNEY GENERAL

Prosecutions for unlawful abortions under Idaho Code §§ 18-605 and 18-606, which are declared to be felonies, would be the responsibility of the prosecuting attorney. OAG 93-1.

Provision of local initiative pertaining to the use of marijuana for medicinal purposes that directs the municipal prosecuting attorney to dismiss certain misdemeanor drug

charges is in direct conflict with state law and is invalid. OAG 07-02.

50-209. Powers of policemen. — The policemen of every city, should any be appointed, shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as the sheriff or constable. Whenever such policemen shall be in fresh pursuit of any offender against any law of the state, including traffic infractions, or of the city and the offense has been committed within the corporate limits of such city, such policemen, while in such fresh pursuit may go beyond the corporate or geographical limits of such city subject to the provisions of chapter 7, title 19, Idaho Code, for the purpose of making such arrest or citation. [1967, ch. 429, § 73, p. 1249; am. 1980, ch. 152, § 2, p. 322; am. 1987, ch. 85, § 1, p. 160.]

STATUTORY NOTES

Cross References. — Policeman's retirement fund, § 50-1501 et seq.

Effective Dates. — Section 3 of S.L. 1980, ch. 152 declared an emergency. Approved March 25, 1980.

Section 3 of S.L. 1987, ch. 85 declared an emergency. Approved March 24, 1987.

JUDICIAL DECISIONS

ANALYSIS

Liability for intoxicated person.
Misuse of public money.
Oath of office.

Liability for Intoxicated Person.

Where police officers did not have control over vehicle of driver who was taken to hospital by police officers after being struck in the nose by bouncer at local bar, and doctor who treated driver told officers that driver was too intoxicated to drive and officers advised driver not to drive and to have someone pick him up and take him home, since no statute imposes a duty on police officers to arrest an intoxicated person who possesses the keys to a vehicle the person might drive, and who has not committed some other crime for which the officer might arrest the person, they were not liable in tort to person injured when driver attempted to drive himself in the vehicle after officers had returned his keys to him and departed. *Olguin v. City of Burley*, 119 Idaho 721, 810 P.2d 255 (1991).

Misuse of Public Money.

Dismissal of charge of misuse of public money was affirmed because defendant, a

police officer, was not within the class of persons who were charged with the receipt, safe keeping, transfer or disbursement of public moneys. *State v. Pruett*, 143 Idaho 151, 139 P.3d 753 (Ct. App. 2006).

Oath of Office.

This section indicates that the decision to appoint police officers is entirely discretionary with the municipality and, thus, although police officers are public officers whose duties relate to governmental functions of a municipality, a police officer does not fill an office created by the laws of the state of Idaho. Even though a city may require a police officer to take an oath before assuming the obligations and responsibilities of office, police officers are not required by § 59-401 to take an oath, and, where defendant was charged with resisting an officer in the performance of his duty, the state was not required to prove that an oath of office was taken pursuant to § 59-401. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Actions against police officers.
Ejection of person from police station.
Time and limit of authority.

Actions Against Police Officers.

Where police officers were sued for battery by citizens they should have notified the city and had the city made party defendant, if they desired the city to furnish counsel and defend the action. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

Reimbursement for attorney's fees and expenses for defending an action against police officers could not be given by a city where the officers gave no notice to the city nor applied to the court to make the city a party defendant. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

Ejection of Person From Police Station.

If a wife was guilty of misconduct, which required her removal from a room at police

headquarters, where the chief of police was questioning her husband, who had been arrested, chief of police was authorized, after requesting the wife to desist or leave the room, and after giving her time to leave, to eject her without becoming liable for assault and battery, provided he used no more force than was necessary. *Cornell v. Harris*, 60 Idaho 87, 88 P.2d 498 (1939).

Time and Limit of Authority.

Former similar section did not enumerate powers, or place exact limits on authority, which a police officer may lawfully exercise in performance of his duties. *Cornell v. Harris*, 60 Idaho 87, 88 P.2d 498 (1939).

OPINIONS OF ATTORNEY GENERAL

Provision of local initiative pertaining to the use of marijuana for medicinal purposes that restricts enforcement of state law by summons only is in direct conflict with this

section and therefore is invalid. OAG 07-02.

No authority exists for a city to appoint the employees of a private company to serve as "peace officers." OAG 08-02.

RESEARCH REFERENCES

A.L.R. — Right of privacy. 57 A.L.R.3d 16.

50-210. Boards — Commissions. — The mayor and council shall have authority to appoint such boards, commissions and committees as may be deemed necessary or expedient to assist the mayor and council in better carrying out the responsibilities of their offices. The responsibilities, duties and authority granted permanent boards or commissions, shall be enumerated by ordinance. All appointments to permanent boards, commissions or committees shall be made by the mayor with the advice and approval of the council, and members of permanent boards, commissions or committees may in like manner be removed. Members of all such boards, commissions or committees shall serve without compensation, but actual and necessary expenses may be allowed by ordinance in the case of permanent boards, commissions or committees, or with prior approval of the mayor and city council for all other boards, commissions or committees. Unless otherwise specifically provided, each such board, commission or committee shall provide its own manner of organizing, but shall maintain such records and make such reports as the mayor and city council may require or request. [1967, ch. 429, § 74, p. 1249; am. 1987, ch. 24, § 1, p. 33.]

50-211. Supervision of elections. [Repealed effective January 1, 2011.] — The city council shall:

- (1) Establish a convenient number of election precincts as provided in section 50-407, Idaho Code;
- (2) Establish the time of opening the polls by ordinance as provided in section 50-453, Idaho Code; and

(3) Canvass the results of the election as provided in section 50-467, Idaho Code. [I.C., § 50-211, as added by 2007, ch. 202, § 10, p. 620.]

STATUTORY NOTES

Cross References. — Municipal elections, § 50-401 et seq.

Prior Laws. — Former § 50-211, which comprised 1967, ch. 429, § 34, p. 1249, was

repealed by S.L. 2007, ch. 202, § 9.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 101, this section is repealed effective January 1, 2011.

RESEARCH REFERENCES

Am. Jur. — 25 Am. Jur. 2d, Elections, § 190 et seq.

C.J.S. — 29 C.J.S., Elections, §§ 15, 50, 82, 180, 317 et seq., 535.

50-212. Official depository. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S. L. 1967, ch. 429, § 35, p. 1249, was repealed by S. L. 1969, ch. 255, § 6.

50-213. Official newspaper. — The city council of each city shall, by ordinance, designate a newspaper within the provisions of title 60, Idaho Code, to be the official newspaper of that city. Said newspaper shall be one published within said city, or if none there be, then a newspaper published within the county in which said city is situated, or the nearest Idaho newspaper of general circulation within the city. [1967, ch. 429, § 36, p. 1249; am. 1977, ch. 194, § 1, p. 528.]

JUDICIAL DECISIONS

ANALYSIS

Branch office.

Place of publication.

Branch Office.

The newspaper's maintenance of a branch or satellite office in the city was not sufficient to make it the official newspaper of that city under this section, where its principal office was located in another city. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

Place of Publication.

Where a newspaper maintained its principal office in a city and had a second-class mailing permit from that city's post office, the type was set, photographs and advertising

copy, and all of the other accouterments of putting out a newspaper (except for the actual printing) took place in the principal office, the newspaper was "published" in the city for official newspaper purposes. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

The language of this section manifests a legislative intent to distinguish a newspaper's place of publication from its place of circulation. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

50-214. Census authorized. — Any city council may provide, by resolution, for taking census or enumeration of the inhabitants thereof, and in such resolution shall provide for engaging the services of the bureau of census, U.S. department of commerce, to take said census or enumeration.

Whenever it shall have been duly ascertained by any census or enumeration taken as hereinbefore provided, such fact shall thereupon by the clerk of said city, be certified to the secretary of state and to the county clerk wherein said city is situated. Provided further, that the population of any city determined by a special census shall thereafter be used in apportionment of state revenues in which the city may share. [1967, ch. 429, § 7, p. 1249; am. 1973, ch. 21, § 1, p. 42.]

STATUTORY NOTES

Cross References. — Census, § 50-103. ch. 21 declared an emergency. Approved February 21, 1973.
Effective Dates. — Section 2 of S.L. 1973, February 21, 1973.

50-215. Prosecutions against corporations under city ordinance.

— In all prosecutions of any corporation for a violation of any city ordinance or any forfeiture or penalty provided by ordinance of such city, it shall be sufficient to make the corporation in its corporate name a defendant and service may be procured by serving of summons upon the president, secretary, or other managing agent of such corporation; and after the return of such service, the court shall be deemed to have acquired jurisdiction of the defendant and may proceed to try said cause; and any judgment imposed by said court shall have the force and effect of a judgment in a civil suit action and execution may issue thereon, and the corporate property, rights and franchises of said defendant may be sold thereunder in satisfaction of the same. The summons herein authorized to be served upon a defendant corporation shall contain a statement that the corporation shall appear forthwith and defend said action, and in case of failure to so appear and defend, a plea of not guilty will be entered by the court and the trial will proceed as if said defendant shall have appeared. A copy of the complaint shall be attached to and served with said summons. [1967, ch. 429, § 8, p. 1249.]

50-216. Compelling attendance of witnesses before council. —

The council of any city shall have power to compel the attendance of witnesses before the mayor and council or any committee thereof in any investigation ordered by the council: provided, that all process shall be issued by the mayor, and the attendance of such witnesses may be compelled by attachment, fine, or imprisonment; provided, further, that the mayor or president of the council shall preside at such hearing and administer all oaths and any person testifying falsely at such investigation shall be deemed guilty of perjury. [1967, ch. 429, § 9, p. 1249.]

STATUTORY NOTES

Cross References. — Penalty for perjury, § 18-5409.

50-217. Payment of judgments. — The city council shall have power to order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenues, franchises, rates or interest

shall be attached, levied upon or sold in or under any process whatsoever. [1967, ch. 429, § 10, p. 1249.]

JUDICIAL DECISIONS

Writ of Execution.

In a breach of contract action, a writ of execution was not allowed against city funds.

City of Idaho Falls v. Beco Constr. Co., 123 Idaho 516, 850 P.2d 165 (1993).

50-218. Prohibition against recognition of invalid or stale claims.

— The city council of any city shall never allow, make valid, or in any manner recognize any demand against the city, which was not at the time of its creation a valid claim against the same; nor shall it authorize to be paid any demand which, without such action, would be invalid or which shall then be barred by any statute of limitation or for which the city was never liable, and any such action shall be void. [1967, ch. 429, § 11, p. 1249.]

50-219. Damage claims. — All claims for damages against a city must be filed as prescribed by chapter 9, title 6, Idaho Code. [1967, ch. 429, § 12, p. 1249; am. 1983, ch. 93, § 1, p. 206.]

STATUTORY NOTES

Cross References. — Filing claims against political subdivision, § 6-906.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Dismissal of suit.
Notice of claim.
Statute of limitations.

Applicability.

The notice provision of this section applies to actions against a city for breach of contract as well as to tort claims. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1986 amendment).

Where a party sought to recover \$7,568.10 for labor and materials it furnished as a subcontractor under a public works contract, the provisions of this section, requiring "claims for damages" to be submitted to a city within 60 days of the time the "damages" occurred, were not applicable. *H-K Contractors v. City of Firth*, 101 Idaho 224, 611 P.2d 1009 (1979) (decision prior to 1983 amendment).

Dismissal of Suit.

Where trash hauler filed a complaint for damages resulting from an alleged breach of a municipal garbage and refuse service contract before the lapse of sixty days after trash hauler informed the city clerk, city councilmen and mayor by letter of trash hauler's

intent to pursue litigation on the breach of contract, the action against the city was properly dismissed. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1983 amendment).

Notice of Claim.

Where a trash hauler, who knew that a public hearing was to be held to determine whether trash hauler's contract to provide garbage and refuse service for the city should be forfeited, sent a letter to the city clerk, city councilmen, and mayor informing them that any attempt to award the contract to any other party would result in litigation for breach of contract, the city had notice of a probable claim for damages. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1983 amendment).

A city's actual notice of plaintiff's damages which resulted from the city's alleged failure to properly operate its municipal water system did not take plaintiff's complaint out of the notice of claim requirements. *Calkins v.*

Fruitland, 97 Idaho 263, 543 P.2d 166 (1975).

The language contained in this section requires that a claimant must file a notice of claim for all damage claims, tort or otherwise, as directed by the filing procedure set forth in § 6-906 of the Idaho Tort Claims Act. *Sweitzer v. Dean*, 118 Idaho 568, 798 P.2d 27 (1990).

Where employee failed to file a notice of claim after being terminated by the city, the employee's claims for wrongful termination and breach of the covenant of good faith and fair dealing were barred. *Bryant v. City of Blackfoot*, 137 Idaho 307, 48 P.3d 636 (2002).

Idaho Code § 50-219 did not violate the unity requirement of Const., Art. III, § 16 because its title encompassed the subject

matter of damage claims against cities and served to fairly identify the content of the act. *Cox v. City of Sandpoint*, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003).

Statute of Limitations.

This section is not a statute of limitations; its requirement of notice of claim is additional to the requirement of the applicable statute of limitations. *Harkness v. City of Burley*, 110 Idaho 353, 715 P.2d 1283 (1986) (decision prior to 1983 amendment).

Cited in: *J.P. Stravens Planning Assocs. v. City of Wallace*, 129 Idaho 542, 928 P.2d 46 (Ct. App. 1996); *Magnuson Props. P'ship v. City of Coeur d'Alene*, 138 Idaho 166, 59 P.3d 971 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Cause of injury.

Construction.

Notice.

Place of injury.

Purpose of section.

Services of private detectives.

Sufficiency of compliance.

Suit against councilmen.

Cause of Injury.

In stating the cause of injury it was not necessary to set forth negligence of the city that resulted in damages, but only the cause of the damages. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

Construction.

Former section governing claims against first-class cities should not have been construed so as to defeat justice. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

Notice.

Former section governing claims against first-class cities was substantially complied with where attorney for property owners by letter demanded that the city continue delivery of irrigation water to the property owners pursuant to contract of specified date, set out the damages sustained by reason of city's failure to deliver the irrigation waters, stated that the city would be held accountable for resulting damages, and set forth the place, character, and cause of the damages. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

While it was incumbent upon a claimant to plead and prove the giving of notice as required by former law, the giving of such notice was removed from the issues of the cause by the defendant's admission in open court that the city had received such notice. *McLean v.*

City of Spirit Lake, 91 Idaho 779, 430 P.2d 670 (1967).

A property owner's letter to the village board calling attention to "this year's flood" and the subsequent removal of culverts and enlargement by the village of the ditch which extended the full length of the boundary between his land and the highway was sufficient notice to the village of the property owner's claim for damages resulting from the complete isolation of his real estate from vehicular access to any highway. *Weaver v. Village of Bancroft*, 92 Idaho 189, 439 P.2d 697 (1968).

Place of Injury.

In action for injury to property, city address of plaintiff was sufficient to direct attention of city to premises located at that address. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

Purpose of Section.

Main purpose of former statute was not to require such statement of circumstances as to show absolute liability, but rather such information that authorities might have been able to make full investigation of cause of injury and determine city's liability therefor. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

Purpose of former section governing claims against first-class cities was to give city notice of claim and opportunity "to ascertain the extent of the injury, investigate its cause and determine the liability of the city." *Dunn v.*

Boise City, 45 Idaho 362, 262 P. 507 (1927); Dunn v. Boise City, 48 Idaho 550, 283 P. 606 (1929).

The purpose of former section governing claims against first-class cities was to give the city prompt notice of the claim and a sufficient time in which to investigate the cause of the claim and the liability of the city. Cox v. City of Pocatello, 77 Idaho 225, 291 P.2d 282 (1955).

Services of Private Detectives.

The action of a city council in attempting to ratify the act of the mayor in engaging the services of private detectives and in ordering the payment of such services was void. Tate v. Johnson, 32 Idaho 251, 181 P. 523 (1919).

Sufficiency of Compliance.

Substantial compliance with statute was

all that law required. Dunn v. Boise City, 45 Idaho 362, 262 P. 507 (1927).

Issue as to whether plaintiff's claim for damages had been properly served on city determined by Supreme Court in prior appeal remained the law of the case. Yearsley v. City of Pocatello, 71 Idaho 347, 231 P.2d 743 (1951).

Suit Against Councilmen.

Plaintiff who sustained personal injuries as the result of a dead end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. Lemmon v. Clayton, 128 F. Supp. 771 (D. Idaho 1955).

RESEARCH REFERENCES

A.L.R. — Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery. 24 A.L.R.3d 965.

Municipal liability for property damage under mob violence statutes. 26 A.L.R.3d 1198.

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury. 44 A.L.R.3d 1108.

Consideration of fact that landowner's remaining land will be subject to assessment in fixing severance damages. 59 A.L.R.3d 534.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. 62 A.L.R.3d 514.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally

operated liquor store or establishment. 95 A.L.R.3d 1243.

Recovery of exemplary or punitive damages from municipal corporation. 1 A.L.R.4th 448.

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection. 22 A.L.R.4th 624.

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 A.L.R.4th 998.

Local government tort liability: minority as affecting notice of claim requirement. 58 A.L.R.4th 402.

Punitive damages: power of equity court to award. 58 A.L.R.4th 844.

Liability of municipal corporation for negligent performance of building inspector's duties. 24 A.L.R.5th 200.

50-220. Acquisition and control of lands outside corporate limits

— **Purpose.** — Cities are hereby authorized to acquire by purchase, lease or otherwise, lands outside of their respective corporate limits and to own, control, regulate and administer lands so acquired, either directly by said corporations or through any governmental agency or other agency. [1967, ch. 429, § 13, p. 1249.]

50-221. Cities situated on navigable lakes and streams — Extension of boundaries into waters. — Cities situated on navigable lakes and streams, when the corporate boundaries or limits of such cities extend to the shorelines of such lakes or streams, shall have power by ordinance to fix, determine or extend its corporate boundaries or limits over the waters of such lakes or streams for a distance of one fourth (1/4) of a mile from the low-water mark of such navigable lakes, and for a distance of seventy-five (75) feet from the low-water mark of such navigable streams. [1967, ch. 429, § 14, p. 1249.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Use of Lake May Be Regulated.

A municipal corporation situated on a lake could by ordinance have prevented persons from living in a houseboat upon such lake,

where the ordinance was for the promotion of the general health and welfare of the citizens of the municipality. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

50-222. Annexation by cities. — (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

(3) Annexation classifications. Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:

(a) Category A: Annexations wherein:

(i) All private landowners have consented to annexation. Annexation where all landowners have consented may extend beyond the city area of impact provided that the land is contiguous to the city and that the comprehensive plan includes the area of annexation;

(ii) Any residential enclaved lands of less than one hundred (100) privately-owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by the boundary of the city's area of impact; or

(iii) The lands are those for which owner approval must be given pursuant to subsection (5)(b)(v) of this section.

(b) Category B: Annexations wherein:

(i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation; or

(ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private

lands have consented to annexation prior to the commencement of the annexation process; or

(iii) The lands are the subject of a development moratorium or a water or sewer connection restriction imposed by state or local health or environmental agencies; provided such lands shall not be counted for purposes of determining the number of separate private ownerships and platted lots of record aggregated to determine the appropriate category.

(c) Category C: Annexations wherein the subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have not consented to annexation prior to commencement of the annexation process.

(4)(a) Evidence of consent to annexation. For purposes of this section, and unless excepted in paragraph (b) of this subsection (4), consent to annex shall be valid only when evidenced by written instrument consenting to annexation executed by the owner or the owner's authorized agent. Written consent to annex lands must be recorded in the county recorder's office to be binding upon subsequent purchasers, heirs, or assigns of lands addressed in the consent. Lands need not be contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to such city.

(b) Exceptions to the requirement of written consent to annexation. The following exceptions apply to the requirement of written consent to annexation provided for in subsection (4)(a) of this section:

(i) Enclaved lands: In category A annexations, no consent is necessary for enclaved lands meeting the requirements of subsection (3)(a)(ii) of this section;

(ii) Implied consent: In category B and C annexations, valid consent to annex is implied for the area of all lands connected to a water or wastewater collection system operated by the city if the connection was requested in writing by the owner, or the owner's authorized agent, or completed before July 1, 2008.

(5) Annexation procedures. Annexation of lands into a city shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.

(a) Procedures for category A annexations: Lands lying contiguous or adjacent to any city in the state of Idaho may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

(b) Procedures for category B annexations: A city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:

(i) The lands are contiguous or adjacent to the city and lie within the city's area of city impact;

(ii) The land is laid off into lots or blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres, or whenever the land is surrounded by the city. Splits of ownership which occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity;

(iii) Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:

(A) The manner of providing tax-supported municipal services to the lands proposed to be annexed;

(B) The changes in taxation and other costs, using examples, which would result if the subject lands were to be annexed;

(C) The means of providing fee-supported municipal services, if any, to the lands proposed to be annexed;

(D) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax-supported or fee-supported services to the lands proposed to be annexed; and

(E) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed;

(iv) Compliance with the notice and hearing procedures governing a zoning district boundary change as set forth in section 67-6511, Idaho Code, on the question of whether the property should be annexed and, if annexed, the zoning designation to be applied thereto; provided however, the initial notice of public hearing concerning the question of annexation and zoning shall be published in the official newspaper of the city and mailed by first class mail to every property owner with lands included in such annexation proposal not less than twenty-eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the

proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one (1) page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property, owned by a county or any entity within the county, that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies; and

(B) Property, owned by a nongovernmental entity, that is used to provide outdoor recreational activities to the public and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services must have the express written permission of the nongovernmental entity owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

(ii) Evidence of consent to annexation based upon the following procedures:

(A) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the

area to be annexed, exclusive of the owners of lands that are subject to a consent to annex which complies with subsection (4)(a) of this section defining consent. Such notice shall invite property owners to give written consent to the annexation, include a description of how that consent can be made and where it can be filed, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.

(B) Each landowner desiring to consent to the proposed annexation must submit the consent in writing to the city clerk by a date specified in the notice, which date shall not be later than forty-five (45) days after the date of the mailing of such notice.

(C) After the date specified in the notice for receipt of written consent, the city clerk shall compile and present to the city council a report setting forth: (i) the total physical area sought to be annexed, and (ii) the total physical area of the lands, as expressed in acres or square feet, whose owners have newly consented in writing to the annexation, plus the area of all lands subject to a prior consent to annex which complies with subsection (4)(a) of this section defining consent. The clerk shall immediately report the results to the city council.

(D) Upon receiving such report, the city council shall review the results and may thereafter confirm whether consent was received from the owners of a majority of the land. The results of the report shall be reflected in the minutes of the city council. If the report as accepted by the city council confirms that owners of a majority of the land area have consented to annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and become effective according to the terms of the ordinance. If the report confirms that owners of a majority of the land area have not consented to the annexation, the category C annexation shall not be authorized.

(6) The decision of a city council to annex and zone lands as a category B or category C annexation shall be subject to judicial review in accordance with the procedures provided in chapter 52, title 67, Idaho Code, and pursuant to the standards set forth in section 67-5279, Idaho Code. Any such appeal shall be filed by an affected person in the appropriate district court no later than twenty-eight (28) days after the date of publication of the annexation ordinance. All cases in which there may arise a question of the validity of any annexation under this section shall be advanced as a matter of immediate public interest and concern, and shall be heard by the district court at the earliest practicable time.

(7) Annexation of noncontiguous municipal airfield. A city may annex land that is not contiguous to the city and is occupied by a municipally owned or operated airport or landing field. However, a city may not annex any other land adjacent to such noncontiguous facilities which is not otherwise annexable pursuant to this section. [I.C., § 50-222, as added by

2002, ch. 333, § 2, p. 939; am. 2008, ch. 118, § 1, p. 327; am. 2009, ch. 53, § 1, p. 145.]

STATUTORY NOTES

Cross References. — Consolidation of cities, § 50-2101 et seq.

Petition to be annexed, § 50-101.

Prior Laws. — Former § 50-522, which comprised 1967, ch. 429, § 15, p. 1249; am. 1969, ch. 404, § 1, p. 1124; am. 1971, ch. 16, § 1, p. 29; am. 1972, ch. 37, § 1, p. 58; am. 1978, ch. 332, § 1, p. 861; am. 1979, ch. 89, § 1, p. 215, was repealed by S.L. 1993, ch. 55, § 2, effective January 1, 1995.

Another former § 50-222, which comprised I.C., § 50-222, as added by 1993, ch. 55, § 3, p. 150; am. 1994, ch. 375, § 1, p. 1208; am. 1996, ch. 116, § 1, p. 427; am. 1998, ch. 191, § 1, p. 695, was repealed by S.L. 2002, ch. 333, § 1, p. 939.

Amendments. — The 2008 amendment, by ch. 118, subdivided and rewrote paragraph (3)(a) to the extent that a detailed comparison is impracticable; in paragraphs (3)(b)(i) and (3)(c), substituted “have not consented to annexation prior to the commencement” for “have evidenced their consent to annexation at the outset”; in subsection (4), substituted “shall be valid only when evidenced by written instrument” for “shall be deemed given when evidenced by written authorization or approval” in the first sentence, substituted “operated by the city only if the connection was requested or completed prior to July 1, 2008” for “operated by the city and for lands

subject to a written consent to annex recorded in the county recorder’s office” in the second sentence, and substituted “Written consent to annex lands must be recorded in the county recorder’s office to be binding” for “Written consent to annex lands, if recorded in the county recorder’s office, shall be binding” in the third sentence; and rewrote paragraph (5)(c)(ii) to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 53, added the subsection (4)(a) designation, and therein, in the first sentence, inserted “and unless excepted in paragraph (b) of this subsection (4)” and “consenting to annexation” and deleted the former second sentence, which read: “Consent shall be implied for the area of all lands connected to a water or wastewater collection system operated by the city only if the connection was requested or completed prior to July 1, 2008”; and added subsection (4)(b).

Effective Dates. — Section 3 of S.L. 1996, ch. 116 declared an emergency. Approved March 6, 1996.

Section 4 of S.L. 1993, ch. 55 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after January 1, 1995.” Approved March 17, 1993.

JUDICIAL DECISIONS

Judicial Review.

This section does not authorize judicial review of denial of a developer’s application for annexation because it does not authorize judicial review of a category A annexation under the Administrative Procedures Act. The right of judicial review depends upon an affirmative decision to annex property, and the legis-

lature did not provide for judicial review when a city decides not to annex property. *Black Labrador Investing, LLC v. Kuna City Council*, — Idaho —, 205 P.3d 1228 (2009).

Cited in: *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Annexation.

Contiguous or adjacent land.

Description of property.

Equity.

Land subject to annexation.

Public street by dedication.

Railroad right of way.

Res judicata.

Validity of annexation.

Annexation.

Where adjacent land had been annexed to a city under former section governing annexation by second-class cities, and all parties concerned had acquiesced therein, the authority of the city in such annexation could not have been collaterally attacked. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Even when annexation was authorized, it must have been reasonable and the dividing of a drive-in theater business through the projection booth by the city limits line would have created problems, resulting in confusion in the levy of taxes, therefore such annexation of a part of the drive-in theater property would have been unreasonable. *Batchelder v. City of Coeur d'Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Annexation is a legislative act of the city government accomplished by the enactment of an ordinance. *Crane Creek Country Club v. City of Boise*, 121 Idaho 485, 826 P.2d 446 (1990).

Contiguous or Adjacent Land.

Meaning of "contiguous or adjacent" land. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Only contiguous or adjacent lands which owner had laid off in lots or blocks, or sold or begun to sell off in tracts not excluding five acres each, could have been annexed. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

An intervening river did not constitute a barrier to complete amalgamation of the communities upon its opposite banks and the construction applied to "contiguous or adjacent" to include both sides of the river, the river not being deemed a break to contiguity, was completely in accord with the legislative intent in the enactment of former § 50-303. *People ex rel. Redford v. Burley*, 86 Idaho 519, 388 P.2d 996 (1964).

Description of Property.

The statutory notice requirements were satisfied if the notice fairly and accurately described the real property in question. Former statute could not be read to require more. *City of Lewiston v. Bergamo*, 119 Idaho 221, 804 P.2d 1352 (Ct. App. 1990).

Equity.

Appellant was not estopped by laches to question the validity of the ordinance annexing his land to the village where the record reflects that appellant had not received any special benefit as a result of the annexation and there was no showing of prejudice to the village, such as expenditures by it for the benefit of appellant's property such as street

improvements and sewer systems, etc., which would require the application of the doctrine of estoppel by laches, the fact that the symmetry of the village would be marred if appellant's realty be disannexed being of small consideration, further the lapse of time, although important was not, standing alone, a determining factor. *Finucane v. Hayden*, 86 Idaho 199, 384 P.2d 236 (1963).

While annexation may be authorized under this section, it also must pass the test of reasonableness. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

Land Subject to Annexation.

Land sought to be annexed must have been laid off by owner or under his authority into lots or blocks of not more than five acres each or he must have sold or begun to sell such lands by metes and bounds in tracts not exceeding five acres. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Land to be annexed under former annexation statute must have been contiguous or adjacent to city, town, or village. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Portions of owner's original holdings still remaining in his possession could have been annexed, where he had subjected part of his land to annexation by the plattings and sales provided for by statute. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Ordinance annexing tract of land was void where 1,500 feet of land laid between city and the tract sought to be annexed. *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953).

Territory to be annexed pursuant to former annexation statute must have been adjoining, contiguous, coterminous or abutting. *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953).

Village ordinance which attempted to annex a strip of five acres of land connected to the village by a corridor strip or shoestring about three miles long and five feet wide mostly within a public highway was not valid, since the territory sought to be annexed was not contiguous or adjacent to the village. *Potvin v. Chubbuck*, 76 Idaho 453, 284 P.2d 414 (1955).

Former annexation statute indicated by the words "shall have been" and "has sold" that the platting or sale by previous owners subjected the property to annexation. *Batchelder v. City of Coeur d'Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Whenever land lying contiguous and adjacent to a municipality had been subdivided into lots or blocks containing not more than five acres, or had been subdivided or platted according to the laws of this state, or had been

sold in tracts not exceeding five acres by the person or his authorized agent who was the owner of the land at the time of the subdividing, platting or selling, said land was thereafter subject to annexation under former annexation statute although the ownership of the land may have changed after the subdividing, platting or selling. *Batchelder v. City of Coeur d'Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Once there has been a single sale of five acres or less from the tract, whether subdivided, platted or laid off or not, then the entire tract may be ripe for annexation, even though the remainder is greater than five acres. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

Public Street by Dedication.

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

Strip of land did not become a public street by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years, and presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

Railroad Right of Way.

The only restrictions on city's annexation of railroad property under former similar section were that it must be reasonably assumed to be necessary for orderly city development and that it must be land connected to city by more than just "shoe string or strip of land upon a public highway," therefore when the railroads failed to produce proof that the annexation was not necessary for the orderly development of the city, the presumption of the validity of the duly enacted municipal ordinance continued to prevail. *Oregon S.L.R.R. v. City of Chubbuck*, 93 Idaho 815, 474 P.2d 244 (1970).

Res Judicata.

Findings and judgment of the court in a prior case were not res judicata though same parties and issues were before the court because the controlling statute was substantially different as compared with the one under consideration before, and the record contained ample evidence that the city had changed substantially since the prior litigation. *Oregon S.L.R.R. v. City of Chubbuck*, 93 Idaho 815, 474 P.2d 244 (1970).

Validity of Annexation.

Where a village located in one county passed an ordinance annexing territory in

another county, the prosecuting attorney of the county in which the land sought to be annexed was located, who filed an action for a declaratory judgment to determine validity of ordinance was entitled to maintain same as a quo warranto proceeding, though quo warranto was not the exclusive remedy for testing validity of annexation. *Potvin v. Chubbuck*, 76 Idaho 453, 284 P.2d 414 (1955).

Municipal corporations had power to annex additional territory only under the conditions, restrictions and limitations which the legislature imposes; therefore if the essentials of the statute were lacking, annexation ordinance was void. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

The stipulation of the parties upon which the trial court based findings, showed without dispute that appellant's agricultural lands had never been laid off, nor sold, nor bargained for sale, in lots, blocks or tracts of not exceeding five acres, therefore the annexation there under consideration, not having been accomplished in compliance with the statutory requirements, was void and the ordinance of the village so far as it attempted such annexation, was void. *Finucane v. Hayden*, 86 Idaho 199, 384 P.2d 236 (1963).

The requirement of former annexation statute to the effect that the "land" should have been platted or segregated as specified therein before it could be annexed did not apply to river beds or channels, specifically referring to land that was readily susceptible to such platting and subdividing. *People ex rel. Redford v. Burley*, 86 Idaho 519, 388 P.2d 996 (1964).

Plaintiffs, owners of lands annexed to city by ordinance enacted pursuant to former law with notice to plaintiffs, were estopped from questioning validity of ordinance despite fact that at least some of their annexed lands were unsubdivided portions larger than five acres, devoted to agricultural uses; where plaintiffs failed to protest at the time of enactment of the ordinance and delayed bringing suit for more than two years, and where, as a result of the annexation, the value of plaintiffs' lands were enhanced by work and expenditures of the city. *Alexander v. Trustees of Village of Middleton*, 92 Idaho 823, 452 P.2d 50 (1969).

If the complaining party comes forward with sufficient evidence that the tract is greater than five acres, and that the land by present owner has not been laid off or subdivided into lots or blocks of more than five acres each, and that the present owner has not sold or begun to sell the land by metes and bounds in tracts not exceeding five acres, then such party will have satisfied the burden of coming forward with sufficient evidence to rebut the presumption of the validity of the ordinance. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

RESEARCH REFERENCES

Am. Jur. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 39 et seq.

A.L.R. — What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 A.L.R.3d 589.

Right of one governmental subdivision to challenge annexation proceedings by another

such subdivision. 17 A.L.R.5th 195.

Boundaries, capacity to attack the fixing or extension of municipal limits or boundary. 17 A.L.R.5th 195.

Refusal of municipality to annex impoverished area as violative of federal law. 22 A.L.R. Fed. 272.

50-222A. Annexation of noncontiguous territory. [Repealed].

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 50-222A, as added by 1989,

ch. 134, § 1, p. 300, was repealed by S. L. 2002, ch. 333, § 3.

50-223. Annexation ordinance to be filed. — It shall be the duty of the clerk of any city, within ten (10) days following the effective date of any annexation ordinance: to file a certified copy of such ordinance with the county auditor, the county treasurer and the county assessor of the county in which the city is located, and with the Idaho state tax commission; to comply with the provisions of section 63-215, Idaho Code; and to order the annexed area surveyed if the council shall so direct; the cost of said survey to be prorated according to the amount of land surveyed and assessed to the then owners of said lands as provided in section 50-1008, Idaho Code, and thereupon and thereafter the corporate limits of such city shall extend to and include such land, and thereafter all property and persons within the limits of such annexed tract of land shall be subject to the provisions of all by-laws and ordinances of the said city. [1967, ch. 429, § 16, p. 1249; am. 1971, ch. 7, § 1, p. 17; am. 1996, ch. 322, § 47, p. 1029.]

STATUTORY NOTES

Cross References. — State tax commission, § 63-101.

ch. 7, provided that the act should be in full force and effect on and after July 1, 1971.

Effective Dates. — Section 2 of S.L. 1971,

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Collateral attack.

Zoning effect of annexation.

Collateral Attack.

Collateral attack could not be made on annexation under former statute. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Zoning Effect of Annexation.

Former law, somewhat similar to this section, did not cause property annexed to the city to automatically fall within the most restrictive classification under a zoning ordinance placing in such classification "all those

parts of the city not specifically included in other zones," but such ordinance referred only to property within the city at the time of its enactment. *Gaige v. City of Boise*, 91 Idaho 481, 425 P.2d 52 (1967).

50-224. Effect of annexation — Cemetery districts exempted. —

Upon compliance with the provisions of section 63-215, Idaho Code, all the property situated within the said annexed territory shall be subject to taxation as other property and persons within the corporate limits of such city, as though said annexed portion had been a part of the said city from the date of its incorporation.

When the annexed area or any part thereof is situated in any district, organized under the laws of this state, and said district is supported in whole or in part by taxes levied upon the annexed territory or any part thereof, and said district provides the same or similar services as that provided by the annexing city, the annexed area shall, upon the filing of the certified copy of said ordinance, be relieved of all liability for levies, taxes and assessments made by said district after the calendar year in which said annexation occurred. The purpose of this section is to prevent duplicate taxation of said annexed area for the same or similar services by such district and the annexing city.

The filing of the certified copy of said ordinance shall constitute a withdrawal of said annexed territory from the district, offering the same or similar services to the annexed territory as the annexing city, which withdrawal shall be effective as of December 31 of the calendar year of annexation, such withdrawal shall have the same effect as if the withdrawal had been made by the statutory procedure for withdrawing from such district.

However, this section shall not apply to public cemetery districts created prior to the date of the annexation ordinance, and that the annexing city may not levy taxes for cemetery maintenance within the bounds of an existing cemetery district. Cities which have heretofore levied taxes for cemetery maintenance on property within an existing cemetery district shall discontinue that practice from and after the date this act becomes effective [May 6, 1970]. [1967, ch. 429, § 17, p. 1249; am. 1967, ch. 432, § 1, p. 1418; am. 1970, ch. 47, § 1, p. 97; am. 1996, ch. 322, § 48, p. 1029.]

STATUTORY NOTES

Cross References. — Cemetery maintenance district law, § 27-101 et seq.

Compiler's Notes. — The bracketed insertion at the end of the section was added by the compiler to provide clarity.

Effective Dates. — Section 2 of S.L. 1967, ch. 432 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Zoning of Annexed Territory.

Although former section, while treating only of taxation, implied abstractly that, upon annexation, a new addition to the municipal-

ity would be automatically worthy of all benefits and subject to all liabilities of city government subject only to the rule that existing property rights cannot willy-nilly be abro-

gated, such implication did not place annexed property automatically in the most restrictive classification under a zoning ordinance placing in such classification "all those parts of

the city not specifically included in other zones." *Gaige v. City of Boise*, 91 Idaho 481, 425 P.2d 52 (1967).

50-225. Exclusion of territory. — The boundaries of any city in this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities are hereby granted power to enact ordinances for that purpose. Such alteration shall not relieve any territory excluded from the limits of a city from its liability on account of any outstanding bonded or other indebtedness of such city or of any bonded or other indebtedness of any improvement district of which the excluded territory is an existing part at the time of the passage of such ordinance. For the purpose of collecting any of the indebtedness specified in this section, the territory so excluded shall be and remain under the jurisdiction of such city. Immediately after the passage, approval and publication of said ordinance, a copy thereof duly certified by the clerk of said city shall be filed in compliance with the provisions of section 63-215, Idaho Code. Thereafter, the boundaries of said city shall be as set forth in said ordinance. [1967, ch. 429, § 18, p. 1249; am. 1996, ch. 322, § 49, p. 1029.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Taxpayer's Objection.

The insignificant increase in a citizen and taxpayer's tax burden, due to the loss of taxes and license fees by reason of the ordinance disannexing certain property from the city, was not sufficient to establish his right to maintain an action to invalidate a city ordi-

nance disannexing certain property. His remedy by way of referendum, as provided by the charter and ordinance in question, was adequate and complete. *Greer v. Lewiston Golf & Country Club*, 81 Idaho 393, 342 P.2d 719 (1959).

50-226. Separation of agricultural lands — Petition. — The owner or adjoining owners of any platted or unplatted tract or tracts of land containing not less than five (5) acres, included within the corporate limits of any city in this state and used exclusively for agricultural purposes, provided, however, if there is upon or over such tract or tracts of land a railroad or canal right of way, such tract or tracts shall, if no other reason exists, be deemed to be used exclusively for agricultural purposes, within the meaning of this section, may petition the district court of the county in which such tract or tracts of land are situated for a judgment and decree of the court detaching such tract or tracts of land from such city. [1967, ch. 429, § 97, p. 1249.]

JUDICIAL DECISIONS

Cited in: *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973); *Williamson*

v. City of McCall, 135 Idaho 452, 19 P.3d 766 (2001).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Agreement not to detach lands from village not binding.
Construction and validity.
Petition.

Agreement Not to Detach Lands from Village Not Binding.

A landowner was not bound by an agreement providing that he would not insist on having his land detached from a village if the village would change a road which crossed the land to another location thereon, where the village built another road on the landowner's property and thereafter maintained both roads thereon instead of one. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

Construction and Validity.

Former sections governing separation of agricultural lands only gave court discretion to determine existence of facts upon which judgment of detachment may have been based and was not delegation of legislative power to judicial officer. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

Facts that gave court power to determine

enumerated. *Ball v. Parma*, 49 Idaho 40, 286 P. 24 (1930).

Petition.

In proceeding to detach agricultural lands from a city, allegations that the plaintiff was the owner of such lands and that they were used exclusively for agricultural purposes, were included in corporate limits of city and exceeded five acres in extent were sufficient, other allegations being merely surplusage. *Hasbrouck v. City of Nampa*, 56 Idaho 353, 55 P.2d 141 (1936).

In proceeding to detach land from a village, the petition sufficiently alleged corporate existence of the village so as to conform to the statute authorizing such action where the village could not have been misled, notwithstanding the corporate existence was only inferentially alleged. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

50-227. Separation of agricultural lands — Notice of petition and hearing thereon. — Upon the filing of such petition with the clerk of such court and paying a fee of ten dollars (\$10.00), which fee shall be in full for all clerk's fees except the regular fees provided by law on the appeals, the said court shall fix a time for the hearing thereupon, which shall not be less than thirty (30) days from the filing of such petition, and the petitioners shall serve or cause to be served a notice of such hearing upon the mayor or clerk of such city at least twenty (20) days before the time fixed for such hearing.

The said petitioner or petitioners shall also cause to be published once a week in two (2) consecutive weekly issues in some newspaper published in said city where the land sought to be detached is situated, or, in case no newspaper is published in said city, cause notices to be posted in at least three (3) conspicuous places in said city, said notice stating the time and place of such hearing and that any person desiring to protest or object to the granting of the prayer of said petition may do so by filing with the clerk of said court at least two (2) days before the day set for the hearing of said petition his objections or protests in writing. Such notice shall state generally the purpose of the petition and the location and description of the land sought to be detached from the corporate limits of said city. [1967, ch. 429, § 98, p. 1249.]

JUDICIAL DECISIONS

Cited in: *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

DECISIONS UNDER PRIOR LAW

Pleadings.

Former similar section was merely directory, and where municipality had challenged sufficiency of petition and service, judgment of detachment should not have been entered until sufficiency had been determined. In re Smith, 38 Idaho 746, 225 P. 495 (1924).

Under procedure provided for in former similar section where a protestant has filed a motion to dismiss petition, a general and special demurrer and a protest, even though latter pleading was not filed two days before day set for hearing on petition, court had jurisdiction to hear issues tendered by such

pleadings and could not properly strike or dismiss the same and default protestant because the protest was not filed within such time. In re Smith, 38 Idaho 746, 225 P. 495 (1924).

In proceeding to detach agricultural lands from a city, allegations that the plaintiff was the owner of such lands and that they were used exclusively for agricultural purposes, were included in corporate limits of city and exceeded five acres in extent were sufficient, other allegations being merely surplusage. Hasbrouck v. City of Nampa, 56 Idaho 353, 55 P.2d 141 (1936).

50-228. Separation of agricultural lands — Reply to protests — Verification. — The petitioner or petitioners may, after any such petitions or objections are filed with the clerk at any time before the hour of the hearing on said petition, in their discretion, file with the judge or clerk replies in writing to said protests or objections. Neither said petition nor objections, protests nor reply need be verified. [1967, ch. 429, § 99, p. 1249.]

50-229. Separation of agricultural lands — Hearing. — The hearing herein provided on said petition shall be held within the corporate limits of the city in which said lands sought to be detached are situated. The regular district court reporter shall reduce to writing the testimony and evidence introduced, the same as in trial of civil actions. The judge of such court, either before or after said hearing, may view the lands and premises sought to be detached, as well as other lands or property within the corporate limits of such city, which might in any way be affected by the granting of such petition, and lands on the outside of such city in the same vicinity or locality in which the lands sought to be detached are situated, and may consider such conditions as he finds in connection with the evidence introduced on the hearing, in making and arriving at his final decision and determination of the matter.

No tract or tracts of land shall be detached from any city which by such detachment, would materially mar the symmetry of such city. [1967, ch. 429, § 100, p. 1249.]

JUDICIAL DECISIONS

View of Premises.

A judge's view of the premises considered in connection with the map of the city and respondents' properties and the testimony relating to the lands surrounding respondents' properties was sufficient to support the court's finding that the overall symmetry of the city would not be materially marred by

detachment of respondents' properties from the city. Hammond v. City of Chubbuck, 95 Idaho 618, 515 P.2d 565 (1973).

Cited in: Williamson v. City of McCall, 135 Idaho 452, 19 P.3d 766 (2001); Marcia T. Turner, L.L.C. v. City of Twin Falls, 144 Idaho 203, 159 P.3d 840 (2007).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Findings of fact and conclusions of law not necessary.
Purpose of view.

Findings of Fact and Conclusions of Law Not Necessary.

In proceeding by landowners to withdraw lands from a village, a failure of the trial court to find on an issue tendered by an allegation in the village's answer and protest was not error under the statute providing that the making of written findings of fact or conclusions of law was not necessary. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

Purpose of View.

Former similar section authorized a view of the land merely to enable the court more correctly to determine the existence of the facts required by another section to be found before there could be a judgment detaching the land, and therefore constituted no delegation of legislative power to the court. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

50-230. Separation of agricultural lands — Judgment of separation. — If, upon the hearing, the court shall find that such tract or tracts of land are tracts containing at least five (5) acres and are included within the corporate limits of such city and the lands included within such tract or tracts are used exclusively for agricultural purposes, provided, however, if there is upon or over such tract or tracts of land a railroad or canal right of way, such tract or tracts shall, if no other reason exists, be deemed to be used exclusively for agricultural purposes, within the meaning of this section; that such lands do not receive sufficient special benefits to justify the retention of said lands within the corporate limits of such city, and that by the detachment of said lands the symmetry of the city would not be materially marred, then the judge of said court shall grant the prayer of said petition and shall enter judgment and decree accordingly: Provided, however, that if said petition prays for detaching several tracts of land the court may enter judgment granting the prayer of the petition as to such tract or tracts as come within his findings as aforesaid and deny such petition as to such tract or tracts which do not come within his findings as aforesaid.

And said tract or tracts of land sought to be detached and for which the said judgment is entered detaching the same shall, upon the entering of said judgment, become detached from such city and the corporate boundary line or limits of said city shall be deemed changed accordingly, and said tract or tracts so detached shall be free from the government of such corporation from said date.

It shall not be necessary for the judge of the court, prior to entering his judgment, or at any time, to make written findings of fact or conclusions of law. Within twenty (20) days after the filing of said decree the petitioner shall file or cause to be filed with the county recorder and with the city clerk a certified copy thereof. [1967, ch. 429, § 101, p. 1249.]

JUDICIAL DECISIONS

ANALYSIS

Detachment inappropriate.
Special benefits.
Symmetry.

Detachment Inappropriate.

Where pastureland was surrounded by land being used in a variety of ways, from stockyards to homes, but all of the uses related to the existence of the community, detachment of the land was inappropriate. *Ramey v. City of Blackfoot*, 99 Idaho 264, 580 P.2d 1289 (1978).

The landowners did not meet their burden to support the separation of their land from the corporate limits by proving land use exclusively for agricultural purposes, because although some trees had been taken from the property and some seedlings were planted at one time, there had been no ongoing cultivation of the soil, harvesting of crops, or production of plants. *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001).

Special Benefits.

Where police and fire protection were the only "special benefits" relied on by city to justify retention of tract of land within the city, the court did not abuse discretion in finding that such were not special benefits. *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

Symmetry.

Where respondents introduced a map of the city and the surrounding area showing the

relationship between the city and respondents' properties and respondents both testified concerning the various properties bordering their land, such evidence was competent relating to the question of symmetry. *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

Symmetry means more than due proportion of the parts of a body, conformance and consistency, and correspondence or similarity of form on opposite sides of an axis or center, it also involves the ability of the municipality to regulate adjoining lands whose use affects the quality of life in residential and business districts of the community; thus, symmetry requires not only regularity in the shape of the city, but also a measure of consistency, harmony and uniformity of regulation. *Ramey v. City of Blackfoot*, 99 Idaho 264, 580 P.2d 1289 (1978).

The finding that the symmetry of the city would be materially marred by the detachment of the property was supported by substantial and competent evidence based on the district judge's personal observations, maps, testimony and observations regarding the use of the surrounding properties, and the city's ability to regulate adjoining lands whose use would affect the quality of life in residential districts. *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.

Date of detachment.

Findings of fact and conclusions of law not necessary.

Questions of fact.

Symmetry.

Construction.

Former similar section vested the court with no discretion except that of determining the existence of the facts therein specified and did not constitute a delegation of legislative power to the court, the duty of the court to render the judgment therein mentioned being mandatory. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

Date of Detachment.

Matter of detachment of lands from municipality was purely legislative, and legislature may fix date of judgment as date of detachment. *Oakley v. Wilson*, 50 Idaho 334, 296 P. 185 (1931).

Findings of Fact and Conclusions of Law Not Necessary.

In proceeding by landowners to withdraw land from a village, a failure of the trial court to find on an issue tendered by an allegation in the village's answer and protest was not

error under the statute providing that the making of written findings of fact or conclusions of law was not necessary. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

Questions of Fact.

In proceeding by landowners to withdraw land from a village, whether land received sufficient special benefit to justify its retention within the corporate limits of the village was a question of fact for the trial court. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

Symmetry.

Where detachment of all tracts covered by petition would mar symmetry of municipality, detachment may have been awarded as to one or more tracts which would not do so. *Maxwell v. Buhl*, 40 Idaho 644, 236 P. 122 (1925).

Word "symmetry" as used in former similar section had not been judicially defined. In determining whether or not symmetry of city

would be materially marred by detachment, regard must have been had to contours of land covered by city. Gullies and hills, while geometrically marring symmetry, may still have left city symmetrical in terms of former section. *Maxwell v. Buhl*, 40 Idaho 644, 236 P. 122 (1925).

Symmetry was discussed, and evidence in case was held sufficient to sustain finding that land in question was not entitled to detachment. *Ball v. Parma*, 49 Idaho 40, 286 P. 24 (1930).

Evidence justified judgment detaching lands from city on the ground that the plaintiff owned lands in excess of five acres within the corporate limits of the city, which were being used exclusively for agricultural purposes, and which did not receive sufficient special benefits, and that symmetry of city would not have been materially marred by their detachment. *Hasbrouck v. City of Nampa*, 56 Idaho 353, 55 P.2d 141 (1936).

50-231. Separation of agricultural lands — Liability for bonded indebtedness. — Such separation shall not relieve any such tract of land from its liability on account of any outstanding bonded indebtedness of such city existing at the time of its separation therefrom. [1967, ch. 429, § 102, p. 1429.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Liability for Bond Payments.

Lands detached from municipality were taxable for payment of bonds issued after petition for detachment was filed but before

judgment of detachment was rendered. *Oakley v. Wilson*, 50 Idaho 334, 296 P. 185 (1931).

50-232. Separation of agricultural lands — Streets not affected by separation. — The detaching of any lands from the corporate limits of any city under the provisions of this chapter shall not affect or change the status of any public streets or highways as the same are laid out, constructed or dedicated at the time of such detachment, but any public streets or highways included within the territory detached shall cease to be a part of such city. [1967, ch. 429, § 103, p. 1429.]

STATUTORY NOTES

Compiler's Notes. — The words "this chapter" probably refer to §§ 50-226 — 50-233, which concern separation of agricultural lands.

50-233. Separation of agricultural lands — Appeal. — Any city or any person aggrieved by the judgment of the court entered as herein provided may appeal from such decision and judgment to the Supreme Court. The procedure of said appeal shall be the same as the procedure on appeal from final judgment in civil actions. [1967, ch. 429, § 104, p. 1249.]

50-234. Lease of mining property by city. — Except as otherwise provided by law, whenever it has been determined or appears probable that any property of a city has become valuable by reason of veins, lodes, or other deposits of mineral underlying said property, the corporate authority of any city, upon the affirmative vote of one half (1/2) plus one (1) of the members of the full council, shall have the power, by ordinance, to grant a lease in and to such minerals, with the right to mine for and extract the same, provided,

that the surface of said property shall be in no wise interfered with or disturbed. Such lease shall provide for such royalties and shall contain such other terms and provisions as said council may deem proper, but in no case shall any such lease be made for a greater period than twenty-five (25) years. [1967, ch. 429, § 19, p. 1249.]

50-235. Tax levy for general and special purposes. — The city council of each city is hereby empowered to levy taxes for general revenue purposes not to exceed nine tenths percent (.9%) of the market value for assessment purposes on all taxable property within the limits of the city in any one (1) year, and such levies for special purposes as are or may hereafter be provided, on all property within the limits of the city, taxable according to the laws of the state of Idaho, the valuation of such properties to be ascertained from the assessment rolls of the proper county. [1967, ch. 429, § 37, p. 1249; am. 1974, ch. 186, § 2, p. 1491; am. 1995, ch. 82, § 21, p. 218.]

STATUTORY NOTES

Cross References. — Airports, tax levy, § 21-404. Capital improvement fund levy, § 50-236. Certification and collection of city taxes, § 50-1007. Policemen's pension, tax levy, § 50-1512.	Public health, special levy, § 50-304. Recreation and culture, special levy, § 50-303. Special assessments for local improvements, § 50-1701 et seq. Special tax assessments, § 50-1004.
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JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.
License tax.
Property road tax.

Construction.

Previous preparation and publication of estimate of probable amount of money necessary to be raised for all purposes, and passage of appropriation bill constituted condition precedent to action under former section governing tax levies for general purposes. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

License Tax.

Municipal corporations could not, in the exercise of their police power, levy and collect

a license tax upon individuals or businesses for purposes of revenue (distinction between revenue and regulatory purposes). *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

Property Road Tax.

Power of towns and villages to levy a tax for general revenue purposes did not authorize them to levy a property road tax. *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894).

50-236. Capital improvement fund levy — Limitations. — Cities are hereby empowered to establish a "Capital Improvements Fund", by ordinance, and levy a special tax not to exceed in the aggregate four-hundredths per cent (.04%) of market value for assessment purposes in any one (1) year. Said fund shall never exceed in the aggregate four-tenths per cent (.4%) of the market value for assessment purposes of the city. Such funds shall not be subject to the provisions of section 50-1014, Idaho Code. Said ordinance shall identify the specific purpose for which the capital

improvements fund shall be used. [1967, ch. 429, § 43, p. 1249; am. 1980, ch. 350, § 21, p. 877.]

50-237. Borrow money. — All cities may borrow money and pledge the credit, revenue and public property of the corporation for the payment thereof, in the manner provided by law, and to evidence the same by issuance of bonds, notes or warrants. [1967, ch. 429, § 38, p. 1249.]

STATUTORY NOTES

Cross References. — Bond issues, § 50-1019 et seq.

CHAPTER 3

POWERS

SECTION.

- 50-301. Corporate and local self-government powers.
- 50-302. Promotion of general welfare — Prescribing penalties.
- 50-302A. Confinement in city or county jail for violating ordinance.
- 50-303. Recreation and culture.
- 50-304. Preservation of public health.
- 50-305. Hospitals — Maintenance.
- 50-306. Public carriers.
- 50-307. License occupations and businesses.
- 50-308. Maintenance of peace — Licensing and regulating amusements.
- 50-309. Fire department — Fire zones.
- 50-310. Hazardous materials.
- 50-311. Creation — Vacation of streets — Eminent domain — Reversion of vacated streets.
- 50-312. Improvement of streets — Special levy.
- 50-313. Public ways — Supervision.
- 50-314. Streets and public places — Regulations.
- 50-315. Rehabilitation improvements.
- 50-316. Sidewalks — General regulations.
- 50-317. Removal of snow, ice, rubbish and weeds.
- 50-318. Identification of streets and houses.
- 50-319. Animals at large — Regulation.
- 50-320. Cemeteries.
- 50-321. Aviation facilities — Acquisition, operation and maintenance.

SECTION.

- 50-322. Transit systems.
- 50-323. Domestic water systems.
- 50-324. Cities authorized to jointly purchase or lease, maintain or operate a joint water system.
- 50-325. Power plants — Power distribution.
- 50-326. Water, light, power and gas plants — Leasing — Selling — Procedure.
- 50-327. Sale of excess power.
- 50-328. Utility transmission systems — Regulations.
- 50-329. Franchise ordinances — Regulations.
- 50-329A. Franchise ordinances — Fees.
- 50-330. Rates of franchise holders — Regulations.
- 50-331. Control of waters.
- 50-332. Control of sewers and drains.
- 50-333. Flood prevention — Drainage.
- 50-334. Abatement of nuisances.
- 50-335. Destruction of buildings inimical to safety and health.
- 50-336 — 50-341. [Repealed.]
- 50-342. Electric power — Purchase or disposal.
- 50-342A. Participation in generation and transmission projects.
- 50-343. [Repealed.]
- 50-344. Solid waste disposal.
- 50-345. Computerized mapping system fees.

50-301. Corporate and local self-government powers. — Cities governed by this act shall be bodies corporate and politic; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and

perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho. [1967, ch. 429, § 6, p. 1249; am. 1976, ch. 214, § 1, p. 784.]

STATUTORY NOTES

Cross References. — Contracts with water companies for municipal water supply, § 30-801.

Corporations, municipal corporation may not become stockholder, Const., Art. XII, § 4.

Declaratory Judgment Act, "municipal corporation" included in term "person," § 10-1213.

Declaratory judgments, rights affected by municipal ordinance, § 10-1202.

Eminent domain, conduits for water supply, § 7-701.

Eminent domain, property of city, village or town subject to, § 7-703.

Eminent domain, public buildings and grounds, § 7-701.

Eminent domain, sewage disposal systems, § 7-701 et seq.

Eminent domain, sewage of incorporated city, § 7-701.

Garnishee, liability of municipal officers as, § 8-521.

Hospital services, contract for, § 39-1416.

Interest rate on warrants after presentment for payment, § 31-2124; indorsement

when not paid upon presentation, § 31-2125.

Joint city and county sites and buildings, § 31-1005.

Libraries, establishment, § 33-2614.

Municipal corporations may contract indebtedness and own property for school, water, sanitary, and illuminating purposes, Const., Art. XII, § 4.

Public buildings and grounds, power of eminent domain, § 7-701.

Rights of way for water and canal corporations, § 30-802; works not to obstruct public highways, § 30-803.

Statutes providing for the taking of property in any municipality for street purposes not abrogated by eminent domain statute, § 7-720.

Venereal diseases, examination and treatment of inmates of city prisons, § 39-604.

Water for domestic purposes, sanitary regulations, § 37-2102.

Worker's compensation law applies to municipal officers and employees, § 72-205.

Compiler's Notes. — For meaning of "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction of powers.

Filling stations.

Franchise ordinance subject to rate supervision.

Houseboats.

Municipal police power.

Nature of powers.

Right to sue.

Tort liability.

Construction of Powers.

Where statutory power of municipality was ambiguous, courts lean strongly toward doctrine of permitting municipalities to control their own local affairs. *Hodges v. Tucker*, 25 Idaho 563, 138 P. 1139 (1914).

Municipal corporations possessed only such powers as state conferred upon them, and only such rights could be exercised by them as were clearly conferred by state or were necessarily implied; any ambiguity or doubt must have been resolved in favor of the granting power, and regard must also have been had to constitutional provisions to secure liberty and

protect rights of citizens. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Where power or authority was given to municipalities, it carried with it by implication the doing of those things necessary to make such things effective and complete, and a discretion as to manner in which power was to be carried out, if not specifically provided. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Filling Stations.

City could have passed ordinance governing erection of filling stations. *Continental Oil Co.*

v. City of Twin Falls, 49 Idaho 89, 286 P. 353 (1930).

Franchise Ordinance Subject to Rate Supervision.

Under former law a city had power to pass an ordinance and franchise contract for establishment of water system, but any such contract was subject always to power of legislature to prescribe a method of determining reasonable maximum rates to be charged as rental. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Houseboats.

Prohibiting anchoring or maintaining crafts used as residences as within city ordinance power in the interest of general health and welfare. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

Municipal Police Power.

The vested right of a riparian owner to use a lake for mooring houseboat was subject to municipal police power and could be prohibited by ordinance. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

Nature of Powers.

In granting a franchise by which rates are fixed or determined, municipal corporation

was not exercising its own powers, but only such powers as have been conferred upon it by state. These powers could have been withdrawn at any time. It had no vested right to continued exercise of them, nor could it thereby obtain a vested right in any contract entered into or property acquired as against right of state. *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 173 P. 972 (1918).

Right to Sue.

A village was a corporate entity, with right to sue in a proper court. While a village itself might have abated nuisance within its limits, in order to have abated public nuisance outside its boundaries, it was probably necessary, and undoubtedly proper, for it to apply to a court of equity for aid in protecting it from such harmful influence. *Village of Am. Falls v. West*, 26 Idaho 301, 142 P. 42 (1914).

Tort Liability.

Cities and villages organized under general laws were liable in damages for a negligent discharge of the duty of keeping such streets and alleys in a reasonably safe condition for use by travelers. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903).

OPINIONS OF ATTORNEY GENERAL

Payment of dues to municipal leagues or associations by cities and counties is an expenditure for a public purpose permitted by the Idaho constitution and statutes. The use of those dues for lobbying efforts is permissible if the lobbying is for an appropriate public purpose. OAG 89-7.

Elected officials may discuss potential public policy issues and determine association policy at meetings of the association of Idaho

cities and Idaho association of counties. But local public policy must be determined and adopted only after compliance with Idaho law, including the Idaho Open Meeting Law, Idaho Code §§ 67-2340 through 67-2347, and all other applicable laws in title 31 or 50, Idaho Code. OAG 89-7.

No authority exists for a city to appoint the employees of a private company to serve as "peace officers." OAG 08-02.

RESEARCH REFERENCES

A.L.R. — Power of municipal corporation to submit to arbitration. 20 A.L.R.3d 569.

Validity of municipal regulation of aircraft flight paths or altitudes. 36 A.L.R.3d 1314.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs. 43 A.L.R.3d 1394.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 A.L.R.3d 1061.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities. 57 A.L.R.3d 998.

Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services. 60 A.L.R.3d 714.

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 A.L.R.3d 655.

Validity, construction, and effect of juvenile curfew regulations. 83 A.L.R.4th 1056.

50-302. Promotion of general welfare — Prescribing penalties. —

(1) Cities shall make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry. Cities may enforce all ordinances by fine, including an infraction penalty, or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

(2) Any city which is participating in a federally mandated program, wherein penalties or enforcement remedies are required by the terms of participation in the program, may enforce such requirements by ordinance, to include a criminal or civil monetary penalty not to exceed one thousand dollars (\$1,000), or imprisonment for criminal offenses not to exceed six (6) months, or to include both a fine and imprisonment for criminal offenses. [1967, ch. 429, § 27, p. 1249; am. 1976, ch. 145, § 2, p. 530; am. 1978, ch. 260, § 2, p. 566; am. 1990, ch. 201, § 1, p. 452; am. 2000, ch. 35, § 2, p. 63; am. 2005, ch. 359, § 15, p. 1133.]

STATUTORY NOTES

Cross References. — Municipal corporations may make and enforce local police regulations, Const., Art. XII, § 2.

Ordinances, § 50-901 et seq.

Compiler's Notes. — For words "this act",

see Compiler's Notes, § 50-102.

Effective Dates. — Section 3 of S.L. 2000, ch. 35 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Control of public intoxication.

Municipal ordinance must yield to state statute.

Control of Public Intoxication.

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, was directed toward the control of public intoxication, the ordinance was a valid exercise of the authority delegated to the city by this section to maintain the peace, good government, and welfare of the city. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

Municipal Ordinance Must Yield to State Statute.

The provisions of a city ordinance must yield to the provisions of a state statute under

Const., Art. XII, § 2. Accordingly, where defendant, upon approach of police car, which displayed flashing lights but did not sound siren, turned left in front of police car causing collision rather than pulling to right-hand side of road or stopping, conviction under § 49-645, which requires that drivers yield for either an audible or visual signal, was upheld even though the Boise City Code requires both an audible and visible signal. *State v. Barsness*, 102 Idaho 210, 628 P.2d 1044, appeal dismissed, 454 U.S. 958, 102 S. Ct. 495, 70 L. Ed. 2d 373 (1981).

Cited in: *Condie v. Mansor*, 96 Idaho 345, 528 P.2d 907 (1974).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction of grants of power.
 Filling stations.
 Full police power over local concern.
 Indictable misdemeanors.
 Trials for violation.
 Void ordinance.

Construction of Grants of Power.

Under grants of power by legislature to municipal corporations, only such powers and rights could be exercised as were clearly comprehended within words of granting act or derived therefrom by necessary implication, regard being had to object of grant. Any ambiguity or doubt arising out of terms used by legislature must be resolved in favor of granting power. Regard must also have been had to constitutional provisions intended to secure liberty and to protect rights of citizens, to the end that no citizen shall be deprived of life, liberty or property without due process of law. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Provisions of former similar section were broad powers, but were to be looked to as limitations upon, rather than grants of power to, the municipalities. *Rowe v. City of Pocatello*, 70 Idaho 343, 218 P.2d 695 (1950).

Filling Stations.

Municipal corporations may adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

Full Police Power over Local Concern.

Where a city ordinance of Boise City classified dogs in a different manner than state statute and forbade owners to allow a vicious dog to run at large, the conviction of the

owner for a violation of the city ordinance was not improper because Boise City possesses full police power over affairs of local concern. *State v. White*, 67 Idaho 309, 177 P.2d 472 (1947).

Indictable Misdemeanors.

Municipality had no power to confer upon police judges jurisdiction summarily to hear and determine acts denominated by general law of state as indictable misdemeanors by enactment of an ordinance prohibiting such acts and prescribing a punishment therefor. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Trials for Violation.

Defendant convicted in municipal court of driving car on city street while intoxicated in violation of city ordinance on appeal to district court was entitled to trial by jury, since defendant was entitled to a trial de novo as though started or commenced in district court, and in district court the defendant was entitled to jury trial. *Miller v. Winstead*, 75 Idaho 262, 270 P.2d 1010 (1954).

Void Ordinance.

That portion of an ordinance attempting to provide for imprisonment in village jail, except for default in payment of fine and costs, was held void. *State v. Bird*, 29 Idaho 47, 156 P. 1140 (1916).

OPINIONS OF ATTORNEY GENERAL

Although Idaho Code § 46-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city's limits, however, the city government has the respon-

sibility to handle the situation. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

50-302A. Confinement in city or county jail for violating ordinance. — Any person charged with or convicted of violation of a city ordinance and subject to imprisonment shall be confined in the city jail; provided, however, that any city shall have the right to use the jail of the county for the confinement of such persons but it shall be liable to the county for the cost of keeping such prisoners. [1970, ch. 30, § 1, p. 60.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1970, ch. 30 provided that the act should be effective at 12:01 a.m. on January 11, 1971.

JUDICIAL DECISIONS

Liability for Costs of Jailing.

While this section does make the city liable to the county for the cost of jailing prisoners charged with or convicted of a city ordinance and § 20-605 places on the city liability for the cost of keeping prisoners in other counties if that offending person was either initially arrested by a city police officer for violation of a city ordinance or for violation of the state motor vehicle laws, nevertheless, under § 20-612, a city is not liable for the cost of keeping prisoners in the county jail if the prisoner has been arrested by a city police officer for viola-

tion of a state motor vehicle law; pursuant to § 20-612, the county has "the duty" to pay for the incarceration of such prisoners. *County of Bannock v. City of Pocatello*, 110 Idaho 292, 715 P.2d 962 (1986).

This section requires the city to pay the county for the cost of confining any person charged with or convicted of violation of a city ordinance; it does not require the city to pay for city ordinance violators who were confined in contiguous counties. *County of Bannock v. City of Pocatello*, 110 Idaho 292, 715 P.2d 962 (1986).

OPINIONS OF ATTORNEY GENERAL

Counties are responsible for the cost incurred by the county jail in housing a prisoner who has been charged with a state law violation committed within city limits and investigated by city police officers, and, while coun-

ties may bring legal action to recoup jail costs incurred for city prisoners charged under city ordinances or state motor vehicle laws, sheriffs cannot refuse to accept city prisoners. OAG 84-4.

50-303. Recreation and culture. — Cities are hereby empowered to create, purchase, operate and maintain recreation and cultural facilities and activities within or without the city limits and regulate the same, and to levy a special tax not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the limits of the city for recreational programs. [1967, ch. 429, § 28, p. 1249; am. 1995, ch. 82, § 22, p. 218.]

50-304. Preservation of public health. — Cities may establish a board of health and prescribe its powers and duties; pass all ordinances and make all regulations necessary to preserve the public health; prevent the introduction of contagious diseases into the city; make quarantine laws for that purpose and enforce the same within five (5) miles of the city. [1967, ch. 429, § 29, p. 1249.]

STATUTORY NOTES

Cross References. — Food, drugs, and oil, title 37, Idaho Code.

Health and safety, title 39, Idaho Code.

JUDICIAL DECISIONS

Cited in: *Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

50-305. Hospitals — Maintenance. — (1) Any city may acquire, in the manner provided for acquiring other property, by purchase or otherwise, hospital grounds, buildings and equipment, and clinics or other health care facilities, and maintain and operate the same and to provide by general ordinance, rules and regulations for governing the same. Cities acting through their respective city councils may convey or lease city hospitals, and the equipment therein, subject to the following conditions:

(a) The entity to which the hospital is to be transferred shall be a nonprofit corporation;

(b) No lease term shall exceed ninety-nine (99) years;

(c) The governing body of the nonprofit corporation must be composed initially of the incumbent members of the board of hospital trustees, as individuals. The articles of incorporation must provide for a membership of the corporation which is:

(i) Broadly representative of the public and includes residents of the city; or

(ii) A single nonprofit corporate member having articles of incorporation which provide for a membership of that corporation which is broadly representative of the public and includes residents of the city.

The articles must further provide for the selection of the governing body by the membership of the corporation, or exclusively by a parent corporation which is the corporate member, with voting power, and not by the governing body itself, except to fill a vacancy for the unexpired term. The articles must further provide that no member of the governing body shall serve more than two (2) consecutive three (3) year terms.

(d) The nonprofit corporation must provide care for indigent patients, and receive any person falling sick or maimed within the county.

(e) The transfer agreement must provide for the transfer of patients, staff and employees, and for the continuing administration of any trusts or bequests or maintenance of records pertaining to the existing public hospital.

(f) The transfer or lease agreement shall provide for a transfer or lease price which shall be either of the following:

(i) The acceptance of all assets and assumption of all liabilities; or

(ii) Such other price as the city council and the nonprofit corporation may agree.

(2) If any hospital which has been conveyed pursuant to this section ceases to be used as a nonprofit hospital, unless the premises so conveyed are sold and the proceeds used to erect or enlarge another nonprofit hospital for the city, the hospital so conveyed reverts to the ownership of the city. If any hospital which has been leased pursuant to this section ceases to be used as a nonprofit hospital, the lease shall terminate. [1967, ch. 429, § 45, p. 1249; am. 1990, ch. 409, § 1, p. 1136; am. 1995, ch. 222, § 1, p. 768; am. 1996, ch. 106, § 1, p. 408; am. 2001, ch. 331, § 9, p. 1161.]

STATUTORY NOTES

Cross References. — Hospital licensing and inspection, § 39-1301 et seq.

Health facilities and construction act, § 39-1401 et seq.

Joint city and county hospitals, § 31-3701 et seq.

Joint county and city hospital boards, monthly reports to county commissioners, § 31-3710.

Joint municipal health facilities authorized, § 39-1416.

Liens in favor of hospitals, § 45-701 et seq.

Effective Dates. — Section 2 of S.L. 1990, ch. 409 declared an emergency. Approved April 12, 1990.

Section 2 of S.L. 1995, ch. 222 declared an emergency. Approved March 20, 1995.

50-306. Public carriers. — Cities shall have authority to regulate by ordinance and prescribe rules relating to levies [levees], crossings, grounds, facilities for storing freight and goods, and the running of trains and public carriers within the limits of said city. [1967, ch. 429, § 30, p. 1249.]

STATUTORY NOTES

Cross References. — Public utilities commission may order improvements, § 61-508.

Railroads in general, Tit. 62.

Railroads not to use streets without two-thirds vote by municipal authorities, Const., Art. XI, § 11; § 62-205.

Safety regulations, § 61-515.

Compiler's Notes. — The bracketed word "levees" was inserted by the compiler, as the probable intended word.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.

Extent of protection of ordinance.

Interstate commerce.

Power to regulate.

Railroad annexation.

What constitutes depot.

Constitutionality.

A court should have declared an ordinance enacted pursuant to former section governing regulation of railroads, limiting the speed of trains within a city, invalid only if it clearly appeared to be unnecessary and unreasonable for the safety of the public. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

A municipal ordinance enacted pursuant to former section governing regulation of railroads, limiting the speed of trains to 8 miles per hour within a city, was not invalid on the ground of discrimination between railroad and bus lines within the city. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

Extent of Protection of Ordinance.

A nine year old boy, flying a kite on a railroad track within a city's limits, was entitled to the protection of a municipal ordinance, enacted pursuant to former section governing regulation of railroads, limiting the speed of trains to 8 miles per hour within the city's limits. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

Interstate Commerce.

A municipal ordinance enacted under the authority of former section governing regulation of railroads, limiting the speed of trains within a city to 8 miles per hour, was not an unconstitutional interference with interstate commerce, as applied to a train operated in interstate commerce. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

Power to Regulate.

Under the law, the fact that the legislature had given power to the public utilities commission to regulate the speed of railway trains did not prevent a city from doing so in the absence of a showing that the commission had taken action. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

Railroad Annexation.

Former section concerning transportation terminals did not give village power to annex railroad land. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

What Constitutes Depot.

Depot and station grounds included all grounds necessary for switching and making

up trains together with sufficient space beyond switches to permit trains to clear and to allow train crews to walk from train to switch

without passing over cattle guards. *Ferrell v. Oregon Short Line R.R.*, 44 Idaho 217, 256 P. 104 (1927).

50-307. License occupations and businesses. — Cities shall have authority to levy and collect a license fee on any occupation or business within the limits of the city and to regulate the same by ordinance. All such fees shall be uniform in respect to the classes upon which they are imposed. [1967, ch. 429, § 31, p. 1249.]

JUDICIAL DECISIONS

Cited in: *Condie v. Mansor*, 96 Idaho 345, 528 P.2d 907 (1974).

DECISIONS UNDER PRIOR LAW

Limitation on Power.

Former similar section was not intended to give authority to municipalities to raise any amount of revenue they may decide necessary by imposition of license or per capita tax upon its citizens. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

Municipal corporations could not, in the exercise of their police power, levy and collect a license tax upon individuals or businesses for purposes of revenue. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

50-308. Maintenance of peace — Licensing and regulating amusements. — Cities shall have power: to prevent and restrain riots, routs, noises, disturbances or disorderly assemblies; to regulate, prevent and punish for the carrying of concealed weapons; to arrest, regulate, punish, fine or set at work on the streets or elsewhere, vagrants or persons found without visible means of support or legitimate business; license and regulate theaters, halls, concerts, dances, theatrics, circuses, carnivals, exhibitions, amusements and other performances, where an admission fee may or may not be charged. [1967, ch. 429, § 32, p. 1249.]

50-309. Fire department — Fire zones. — A. Any city, in order to prevent and extinguish fires, shall have the power to erect engine houses, purchase or lease fire engines and all other apparatus to maintain a fire department, to provide water for fire purposes in the city, in such manner as the council may by ordinance prescribe.

B. Cities may prescribe and alter the limits within which no building shall be constructed except of brick, stone or other incombustible material and fire retardant roof and after such limits are established, no special permits shall be given for the erection of buildings of combustible material within said limits, except as provided in sections 50-1201 through 50-1210, Idaho Code. [1967, ch. 429, § 41, p. 1249; am. 1974, ch. 186, § 1, p. 1491.]

STATUTORY NOTES

Cross References. — Collective bargaining by municipal firefighters, § 44-1801 et seq.

County fire-fighting districts, cooperating

and reciprocating use of fire-fighting apparatus, § 31-1430.

Municipalities authorized to extend police and fire protection to county fair, § 22-209.

Nonliability of agency for delay in reporting fire, exception, § 31-1436.

Worker's compensation law applies to firemen, § 72-205.

Compiler's Notes. — Sections 50-1201 — 50-1210, referred to in subsection B, were repealed by S.L. 1975, ch. 188, § 1. For present comparable law, see § 67-6501 et seq.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Authorization for maintenance.

Fire departments.

Fire limits.

Governmental function.

Liability for torts.

Authorization for Maintenance.

Municipal corporations without classification as to class, and cities of the second class, in their corporate capacities were legislatively authorized to prevent and extinguish fires and to acquire all necessary apparatus and equipment, including engine houses, to maintain a fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

Fire Departments.

Municipal corporations without classification as to class, and cities of the second class, in their corporate capacities were legislatively authorized to prevent and extinguish fires and to acquire all necessary apparatus and equipment, including engine houses, to maintain a fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

Fire Limits.

Power to provide for demolition of buildings constructed in violation of an ordinance establishing fire limits within a village was necessarily implied in order to make ordinance effective. *Beem v. Davis*, 31 Idaho 730, 175 P. 959 (1918).

Governmental Function.

A municipal corporation was not liable for negligence in maintaining a pole extending

through a hole in the floor from the firemen's quarters to the fire fighting apparatus on the floor below since such was in the exercise of a governmental function. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

Since a municipality in the maintenance of its fire department exercised governmental functions, it had been held generally that a municipality was not liable for the negligence of officers and servants in connection with its fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

While the legislative grant authorizing municipal corporations to establish fire departments was couched in permissive language, nevertheless a municipal corporation was exercising a governmental function when maintaining and operating a fire department pursuant to legislative authority. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

Liability for Torts.

The overwhelming weight of authority was to the effect that the municipal corporation was not liable for torts arising from a defective condition or negligent construction or operation of its fire fighting facilities and apparatus. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

50-310. Hazardous materials. — Cities are empowered: to regulate or prohibit the loading or storage of any material deemed hazardous, or transporting the same over the streets or waters in the city, or within three (3) miles of the limits thereof; to prevent the discharge of firearms, rockets, powder, fireworks or other dangerous, combustible or explosive material in the streets, lots, grounds, alleys or in and about the vicinity of any building and punish violators therefor. [1967, ch. 429, § 51, p. 1249.]

STATUTORY NOTES

Cross References. — Marking of explosives, § 39-2101 et seq.

50-311. Creation — Vacation of streets — Eminent domain — Reversion of vacated streets. — Cities are empowered to: create, open, widen or extend any street, avenue, alley or lane, annul, vacate or discontinue the same whenever deemed expedient for the public good; to take private property for such purposes when deemed necessary, or for the purpose of giving right of way or other privileges to railroad companies, or for the purpose of erecting malls or commons; provided, however, that in all cases the city shall make adequate compensation therefor to the person or persons whose property shall be taken or injured thereby. The taking of property shall be as provided in title 7, chapter 7, Idaho Code. The amount of damages resulting from the vacation of any street, avenue, alley or lane shall be determined, under such terms and conditions as may be provided by the city council. Provided further that whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, or as the city council deems in the best interests of the adjoining properties, but the right of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby. In cities of fifty thousand (50,000) population or more in which a dedicated alley has not been used as an alley for a period of fifty (50) years [such alley] shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, by operation of the law, but the existing rights of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby. [1967, ch. 429, § 42, p. 1249; am. 1973, ch. 268, § 1, p. 563.]

STATUTORY NOTES

Compiler's Notes. — The bracketed words "such alley" were inserted in the last sentence by the compiler to make the sentence more clear.

Effective Dates. — Section 2 of S.L. 1973,

ch. 268 provided the act should take effect on and after July 1, 1973, and should be effective with respect to dedicated alleys which had heretofore been unused as alleys.

JUDICIAL DECISIONS

ANALYSIS

Alley.

— Vacation.

Construction with other law.

Legislative intent.

Ordinance.

— Conflict with statute.

Reversion.

Alley.

— Vacation.

The legislature has provided this section as the method for municipal corporations to follow when vacating an alley; this section does not empower a municipal corporation to impose any conditions upon the vacation of an alley except for the proviso regarding impairment of the right of way, easements, and franchise rights of lot owners and public util-

ities. *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

Where the evidence did not rebut the presumption that one-half of a vacated alley was conveyed with a first conveyance, even though the alley was not expressly mentioned, the decision of the district judge in favor of the grantee of that conveyance was affirmed. *Carney v. Heinson*, 133 Idaho 275, 985 P.2d 1137 (1999).

There is no substantive limitation on the

power of a city to vacate under this provision, since the language merely indicates that reversion of ownership to adjacent landowners does not affect the rights of those who hold existing rights-of-way or easements independent of the public right-of-way that is vacated. *Allison v. City of Coeur d'Alene*, 133 Idaho 560, 990 P.2d 141 (1999).

A lot owner whose property has been taken pursuant to this provision may seek compensation or challenge a city's procedures or findings, but may not challenge the validity of the city's actions solely because his rights have been impaired. *Allison v. City of Coeur d'Alene*, 133 Idaho 560, 990 P.2d 141 (1999).

Construction With Other Law.

There is a clear distinction between a city vacating a city street and a city exchanging a portion of a city street for other property. The vacation of a city street is governed by this section and, if the street is part of a plat or subdivided tract, by § 50-1321. The exchange of city real property for other property is governed by § 50-1403. Moreover, under Idaho law, a city has no authority to convey a portion of a city street. *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

Legislative Intent.

The primary intent of this section is to settle ownership of property after vacation and provide that a newly vacated parcel becomes part of the adjoining property rather than becoming an independent parcel owned by the landowner. *Carney v. Heinson*, 133

Idaho 275, 985 P.2d 1137 (1999).

Ordinance.

—Conflict With Statute.

A city ordinance that is in conflict with a state law of general application is invalid; this section, which applies to all municipal corporations in the State of Idaho and is an act of the state legislature, is clearly a state law of general application. It provides the method for municipal corporations to follow in vacating alleys. The two conditions that city imposed upon vacation of the alley, as well as the right of reversion should a certificate of occupancy not be issued, were not expressly granted powers, fairly implied powers from the clear language of this section, nor powers essential to the vacation of the alley; the only condition that this section allows upon a finding of expedience for the public good is that the vacation cannot impair "the right of way, easements and franchise rights of any lot owner or public utility." Thus, the two conditions, as well as the right of reversion, were *ultra vires* acts by city because they conflicted with this section. *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

Reversion.

Reversion provision only applies to an alley, not a road. *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d 1008 (2005).

Cited in: *Boise City ex rel. Amyx v. Fails*, 94 Idaho 840, 499 P.2d 326 (1972); *Clark v. Olsen*, 110 Idaho 323, 715 P.2d 993 (1986).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appraisal of damages.
Bridges.
Construction.
Construction with eminent domain law.
Damages for vacation.
Discretion.
Discretionary power.
Discrimination.
Effect of recording plat.
Irrigation districts.
Jurisdiction exclusive.
Liability for negligence.
Procedure.
Road levy.
Sewers.
Vacation for private uses.
When conveyance unnecessary.

Appraisal of Damages.

Damages to be appraised under former similar section were damages and injuries resulting from vacation of a street and taking of same either by city for its exclusive use, or granting of right to take same to a railway

company or any other company making exclusive use of same. Under constitution and statute, a city had no right to condemn or vacate a street for private use of a railway company until full compensation had been made for all injury which would result from

such taking. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912).

Bridges.

Counties were not required to construct and maintain bridges exceeding sixty feet in length, at expense of county, over streams crossing highway within limits of municipal corporations. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Under existing statutes, city council or village trustees of incorporated cities and towns had exclusive control of streets and highways within their corporate limits, which includes full power to construct bridges and maintain same. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Construction.

Former statutes clearly conferred full power and authority upon mayor and common council of all cities within state to enact ordinances providing for paving and improvement of streets and buildings of storm sewers and drains and for construction of sidewalks. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Terms "special assessments," "special tax," and "taxes" were used interchangeably. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

Construction With Eminent Domain Law.

Neither former similar section nor former section concerning eminent domain required any notice and left all matters to an ordinance, and ordinance was required to comply with provisions of constitution and statutes of this state in exercising right of eminent domain. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912); *Thomas v. Boise City*, 25 Idaho 522, 138 P. 1110 (1914).

Damages for Vacation.

One whose property did not abut on the part of the street so vacated could not maintain an action to enjoin the enforcement of the ordinance, though he, in common with others, may have been inconvenienced by such vacation. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

Where the authorities, by vacating a street, cut off the property owner's ingress to or egress from his property, they caused a loss or damage to him not common to the rest of the community and he had a right of action for such injury. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

A municipal corporation granting a right of way in its governmental capacity was not liable for damages occasioned by the grantee's use of the easement. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912).

Discretion.

Right to vacate a street or a part thereof was largely in discretion of body possessing that power, and such body may determine as to public convenience and necessity of such discontinuance, and where there had been no glaring informality or illegality in proceedings, its judgment should not have been disturbed. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

Discretionary Power.

Municipality was vested with certain discretion in respect to grading and preparing full width of street so as to render same fit for travel. *Smith v. City of Rexburg*, 24 Idaho 176, 132 P. 1153 (1913).

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

Discrimination.

Paving assessment against abutting property was held not discriminatory because city paved street in front of other property abutting on line of improvement at its own expense. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

Effect of Recording Plat.

Effect of recording plat was to vest in city determinable fee for public use of surface of street. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

Irrigation Districts.

In exercising its right to grade its streets, city could, if necessary, remove ditches and require their reconstruction by pipelines laid beneath surface by company possessing franchise and easement for such ditches. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).

Former sections concerning street improvements and bond issuance gave cities power to destroy an irrigation ditch where necessary in the reconstruction of roadbeds and grades. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).

Power conferred upon irrigation districts to enter streets and alleys of municipalities did not repeal or interfere with power of such municipalities to exercise control of their streets and alleys and to regulate manner of their use, and to direct manner in which such irrigation district shall construct and maintain its ditches, canals, and laterals within such municipalities. *Nampa v. Nampa & Meridian Irrigation Dist.*, 23 Idaho 422, 131 P. 8,

appeal dismissed, 238 U.S. 643, 35 S. Ct. 602, 59 L. Ed. 1502 (1913).

In suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

Jurisdiction Exclusive.

Right of towns and villages to repair highways, streets and alleys was exclusive, and county commissioners could not authorize a road overseer to go within limits of any organized town or village to repair, or interfere with, its streets or alleys. *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894).

Liability for Negligence.

Cities and villages incorporated under general laws of state were liable in damages for a negligent discharge of duty of keeping streets and alleys in a reasonably safe condition for use by travelers in usual modes. *Miller v. Mullan*, 17 Idaho 28, 104 P. 660 (1909).

If abutting property was injured by a city, while it was lawfully exercising its power in grading streets and in reconstructing the roadbed, city was not answerable in damages, in absence of a statute expressly imposing such liability. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911); *Crane v. Harrison*, 40 Idaho 229, 232 P. 578 (1925), overruled on other grounds, *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

City officials must have understood that if they neglected to keep streets and alleys in proper repair, and injury resulted from such negligence, city was liable for damages, and the officer who neglected his duty in making proper inspection of streets and sidewalks, by reason whereof personal injury resulted, was liable to city. *Powers v. Boise City*, 22 Idaho 286, 125 P. 194 (1912).

City council had to keep streets, alleys, bridges, etc., of city open, in repair and free from nuisance, and could require persons to remove encroachments on same at expense of such persons, and were liable in damages for injuries resulting from neglect of such duty, as to obstructions on and above the streets, etc. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

To charge city with liability for damages, it

was not necessary that it had notice of a nuisance. City was charged with the duty of keeping streets and sidewalks free for use and passage without danger. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

Incorporated cities and village were liable in damages for negligence in failing to maintain streets and alleys in reasonably safe conditions for travel. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Procedure.

Court should decide as matter of law that use for which condemnation was sought was public use; after that, question of extent of enterprise and necessity for taking should have been in large measure left to judgment and discretion of public agency seeking to make condemnation. *Washington Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911); *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

After additional territory had been annexed, city had authority to condemn parcels for street improvements. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Road Levy.

Levy authorized under former section governing street improvements to be made by municipality was in addition to road levy authorized to be made by the county commissioners under § 40-501, a portion of which was apportioned to city. *Hettinger v. Good Rd. Dist. No. 1*, 19 Idaho 313, 113 P. 721 (1911); *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912).

Sewers.

Cities and villages had power to construct all necessary and incidental works for a complete sewerage system. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Vacation for Private Uses.

Under former similar section it was immaterial that vacation was made for purpose of devoting vacated street or alley to private uses. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

Where portion of street was vacated in recorded plat, city could not have conveyed fee therein to owner of abutting land not in plat. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

When Conveyance Unnecessary.

Where a street was vacated in interest of a company that owns all lands on both sides of street, a conveyance to it was unnecessary; vacated street reverted to abutting property owner. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

RESEARCH REFERENCES

A.L.R. — Authorization, prohibition or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Estoppel of municipality as to encroachments upon public streets. 44 A.L.R.3d 257.

Widening of city street as local improve-

ment justifying special assessment of adjacent property. 46 A.L.R.3d 127.

Authority of zoning commission to impose, as condition of allowance of special zoning exception, permit, or variance, requirements as to highway and traffic changes. 49 A.L.R.3d 492.

50-312. Improvement of streets — Special levy. — Cities may levy and collect a special tax upon all of the taxable property within the city limits to establish, lay out, alter, open any streets or alleys and improve, repair, light, grade, sprinkle, flush, gravel, oil, or drain the same and remove any and all obstructions therefrom; establish grades and construct bridges, crosswalks, culverts, drainage systems thereon and repair and maintain the same; cause to be planted, set out and cultivated, shade trees along the lines thereof or therein; extend its street lighting system to a maximum distance of two (2) miles outside its corporate limits, along approaches to its street system, subject to the approval of the agency having legal jurisdiction of the highway, road or street involved; provided, however, that no public utility, city[,] quasi-municipal corporation or cooperative association serving electric energy to such street lighting system outside the corporate limits of such city shall, by so serving such electric energy, acquire any rights to serve any other property or any present or future consumer, by virtue of, or in violation of, any provisions of title 61, chapter 3, Idaho Code. [1967, ch. 429, § 44, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma was inserted by the compiler to make the sentence more clear.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Assessments against municipal property.

Construction.

Validity and construction.

Assessments Against Municipal Property.

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Construction.

The terms "special assessments," "special tax," and "taxes" were used interchangeably. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

Validity and Construction.

Former similar section, where the necessity to repair the streets exists, violated no constitutional right of the owners of property assessed, as long as the benefits continued respectively to equal the individual assessments. *Noble Estate v. City of Boise*, 19 F.2d 927 (D. Idaho 1927).

50-313. Public ways — Supervision. — The city councils of cities shall have the care, supervision, and control of all public highways and bridges within the corporate limits, and shall cause them to be kept open and in repair and free from nuisances. Where any highway within the corporate limits has been designated a part of the state highway system, the provisions of section 40-502, Idaho Code, shall be applicable. [1967, ch. 429, § 47, p. 1249; am. 1985, ch. 253, § 8, p. 586.]

JUDICIAL DECISIONS

ANALYSIS

Liability for injuries.
Regulation of traffic.

Liability for Injuries.

In an action by a motorist, who sustained personal injuries in an automobile accident at an intersection, to recover against the city on the theory that it was negligent in its construction and maintenance of a stop sign which was not seen by the motorist before the accident, summary judgment for the city was precluded by issues of fact as to whether the sign was obscured by foliage, whether the city had actual or constructive notice of obscured visibility of the sign, and whether the poorly constructed sign was the proximate cause of the accident. *Smith v. Preston*, 97 Idaho 295, 543 P.2d 848 (1975).

Regulation of Traffic.

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, did not attempt to control traffic or to control roadways, the ordinance was not in conflict with this section which provides cities with authority to control traffic and roadways within their corporate limits. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Agent of state.
Barrier at end of street.
Barriers.
Bridges.
Construction.
Control.
Dead-end streets.
Ice and snow.
Liability for injuries.
Pipes of water company.
Private driveways.
Proprietary functions.
Reasonable care.
Regulation of traffic.
Right to irrigation ditch.
Right to taxi stand.
Signs over sidewalks.
Validity of assessments.

Agent of State.

Municipality in exercising its power over its streets and alleys acted as agent of the state. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

Barrier at End of Street.

Maintenance of a street with its terminus upon the bank of a river with a barrier erected thereat was not a nuisance for there was no defect which obstructed free passage or use of

the street in the customary manner. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

Barriers.

Former similar section imposed a duty upon a city to keep the streets within its limits in a reasonably safe condition for use by travelers in the usual modes, and, arising out of this duty and as a corollary thereof, the duty to erect and maintain barriers or warning devices where necessary to make the street reasonably safe for travelers using ordinary care and at such places as would be unsafe for usual and ordinary travel without such barriers or warning devices. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

There was no duty resting upon a municipality to erect barriers sufficient to withstand the impact of an auto out of control or recklessly driven. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

Bridges.

Bridge connecting two streets within corporate limits of a village, was under exclusive control of village and village, was bound to keep it in repair and safe for accommodation of traveling public, and was liable for any injury resulting to a traveler from its neglect of duty in that respect. *Village of Sand Point v. Doyle*, 11 Idaho 642, 83 P. 598 (1905).

Construction.

Board of county commissioners had not the control of the roads and bridges within corporate limits of a city or village, and they were not required, under law, to construct and maintain bridges exceeding sixty feet in length at expense of county over streams crossing highways within such corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

County authorities could not be compelled by mandamus to construct or repair bridge in city but could do so. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

The legislature had by former similar section delegated to the civil municipalities of this state the authority, subject to constitutional limitations, to police the streets of the municipalities and to regulate traffic thereon. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

Control.

Council or trustees had exclusive control of streets, including bridges, within corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Dead-End Streets.

It was not unlawful for the city to maintain a street with its terminus on the bank of a river; dead-end streets were not unlawful. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

Ice and Snow.

Where ice and snow have not accumulated upon a sidewalk so as to create an obstruction, mere slipperiness and unevenness caused by tramping, thawing, and freezing, in case of an accident, would not render municipality liable. *Wilson v. City of Idaho Falls*, 17 Idaho 425, 105 P. 1057 (1909).

Liability for Injuries.

Municipalities had exclusive control over streets, etc., within their limits and were liable to a traveler on such streets who was injured by a negligent discharge by municipality of duties imposed by former similar section. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903); *Eaton v. City of Weiser*, 12 Idaho 544, 86 P. 541 (1906).

Municipalities had complete and exclusive control of the streets and alleys, and where city permitted and participated in placing a tank, containing explosive gas, in an alley, and it was reasonably foreseeable that damage would result from the tank, the city was liable for damages sustained as a result of the injury to travelers on the streets as well as to property adjacent to the tank. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Complaint for personal injuries arising out of dead-end street accident, which alleged that injuries were proximately caused by the failure of the councilmen to maintain warning signs, stated a cause of action against the councilmen. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

Mayor of a city of a second class was not individually liable for maintenance of street in a reasonably safe condition and could not be sued individually for damages for injuries sustained as the result of alleged failure of city to maintain warning sign of a dead-end street. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

Plaintiff who sustained personal injuries as the result of a dead-end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

Pipes of Water Company.

Pipes of water company lying beneath the surface did not constitute a nuisance and water company could either have removed them or not have removed them, and if the company elected to remove the pipes, it was entitled to a period of 90 days in which to remove the pipes. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to

regulation by the commission, since municipalities retain the right to control and maintain its streets and alleys. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

Private Driveways.

Under its exercise of the police power and authority over the streets and in furtherance of the public good, the common council, for sufficient reason, could eliminate curb cuts and driveways without incurring liability to the abutting owner for the resulting injury. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

Proprietary Functions.

Granting of permits to place structures in, under, on, or about the streets and alleys was a proprietary and not governmental function. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Municipalities, in the exercise of proprietary functions, were under the same obligations and liabilities as a private owner, and the latter was liable to those outside his premises though not presently or prospectively using the facilities. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Reasonable Care.

Former similar section required only that a city exercise reasonable and ordinary care to keep its streets in a reasonably safe condition for ordinary travel. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

Regulation of Traffic.

When a street was acquired, either by dedication or condemnation, and opened for traffic, the city had the power and authority to police the same and regulate the traffic thereon. *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

City in the exercise of its police power over, and its control of, streets had the right to regulate the use thereof by all vehicles, commercial, and noncommercial, and this power included the right to designate and regulate the stands of taxicabs. *Yellow Cab Taxi Serv.*

v. City of Twin Falls, 68 Idaho 145, 190 P.2d 681 (1948).

The city had the supervision and control of the public highways and streets within its limits. *Yellow Cab Taxi Serv. v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

Right to Irrigation Ditch.

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers, and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

Right to Taxi Stand.

Taxicab service operator who alleged occupation of a taxicab stand for a 16-year period was not entitled to have his rights to the use of the street quieted in him and such right protected by injunction. *Yellow Cab Taxi Serv. v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

Signs Over Sidewalks.

Municipality was liable in first instance for permitting private persons negligently to place signs over sidewalk or streets and persons who placed such obstructions over sidewalk were liable to city for whatever damages it had to pay for such unlawful acts. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

Validity of Assessments.

Assessments made under authority granted in former section governing street improvements violated no constitutional rights of the owners of the property so assessed, as long as the benefits continue respectively to equal the individual assessments. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

RESEARCH REFERENCES

Am. Jur. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 439 et seq.

50-314. Streets and public places — Regulations. — Cities shall have power to: control and limit the traffic on streets, avenues and public places; regulate and control all encroachments upon and into all sidewalks, streets, avenues, and alleys in said city; remove all obstructions from the sidewalks, curbs, gutters and crosswalks at the expense of the person placing them there. [1967, ch. 429, § 49, p. 1249.]

STATUTORY NOTES

Cross References. — Disposition of funds derived from regulation of parking on city streets, § 50-1015A.

JUDICIAL DECISIONS

ANALYSIS

Installation of stop sign.
Regulation of traffic.

Installation of Stop Sign.

Neither the Idaho statutes nor the Uniform Manual of Traffic Control Devices required a traffic engineering study by a city prior to installation of a stop sign. *Lisher v. City of Potlatch*, 101 Idaho 343, 612 P.2d 1190 (1980).

Regulation of Traffic.

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, did not attempt to control traffic or to control roadways, the ordinance was not

in conflict with this section which provides cities with authority to control traffic and roadways within their corporate limits. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

City has authority to limit the traffic on a public road to bicycles and pedestrians. *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d 1008 (2005).

Cited in: *City of Nampa v. Swayne*, 97 Idaho 530, 547 P.2d 1135 (1976).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Irrigation ditch.
Liability for condition of streets.
Liability for permitting encroachments.
Obstruction in street.
Private driveways.
Regulation of filling stations.
Structures overhanging street.

Irrigation Ditch.

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers, and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

Liability for Condition of Streets.

Cities and villages which were granted exclusive control over their streets, avenues, lanes, and alleys were liable in damages for negligent discharge of the duty of keeping such streets and alleys in a reasonably safe condition for use by travelers in the usual modes. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903).

Liability for Permitting Encroachments.

The fact that city did not by ordinance regulate or prohibit encroachments did not relieve it from liability for negligently permitting such encroachments. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

Obstruction in Street.

Holder of permit to install an obstruction in street acquired no property or contractual right by reason of such permit, and, whenever city authorities revoked such permit, holder had no alternative. *Keyser v. City of Boise*, 30 Idaho 440, 165 P. 1121 (1917).

Private Driveways.

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

Regulation of Filling Stations.

Municipal corporations may adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

Structures Overhanging Street.

Municipality was liable for damages for

injuries resulting from neglect of its duty to keep its streets in reasonably safe condition for travel. Rule extended not only to surface of street or sidewalk but also to structures over them. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

50-315. Rehabilitation improvements. — Cities may provide for the repairing, rebuilding and relaying of pavement, curb, gutter, sewer or other improvements, the procedure and manner of payment to be the same as provided by law for making such improvements in the first instance. [1967, ch. 429, § 53, p. 1249.]

50-316. Sidewalks — General regulations. — Cities may provide by general ordinance for the construction, repair or removal of sidewalks which are deemed by the council to be dangerous and unsafe, and for the replacing thereof, assess the cost as provided in section 50-1008[, Idaho Code,] to the property in front of which the same shall be constructed, repaired or laid. [1967, ch. 429, § 56, p. 1249.]

STATUTORY NOTES

Cross References. — Local improvement assessments, § 50-1701 et seq.

tion was added by the compiler to correct the statutory citation style.

Compiler's Notes. — The bracketed inser-

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction contracts.
Private driveways.

Construction Contracts.

Former similar section authorized a city to make contracts for the construction of sidewalks. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Private Driveways.

The closure of designated curb cuts and reconstruction of the curb ordered by the

common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

50-317. Removal of snow, ice, rubbish and weeds. — Cities are empowered to cause all sidewalks and alleys to be cleared of snow, ice and rubbish, and the cutting and removal of trees, weeds and grass, and the removal of rubbish upon and from all private property within the city and the parking within the curbing abutting same, and to assess the cost thereof against the private property so cleared, and against the property abutting the parking, sidewalks and alleys so cleaned. Such assessment shall be collected as provided in section 50-1008[, Idaho Code]. [1967, ch. 429, § 57, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

Cited in: *Roell v. Boise City*, 130 Idaho 199, 938 P.2d 1237 (1997).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Filling stations.
Private driveways.

Filling Stations.

Municipal corporations could adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

Private Driveways.

The closure of designated curb cuts and reconstruction of the curb ordered by the

common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

RESEARCH REFERENCES

A.L.R. — Salting for snow removal as taking or damaging abutting property for eminent domain purposes. 64 A.L.R.3d 1239.

50-318. Identification of streets and houses. — Cities may provide by ordinance for the naming of streets and avenues and the numbering of houses adjacent thereto. [1967, ch. 429, § 54, p. 1249.]

50-319. Animals at large — Regulation. — The mayor and council of each city shall have authority: to regulate the running at large of domesticated animals; to cause such as may be running at large to be impounded and sold to discharge the penalties and costs of impounding, keeping and sale; to impose a license tax upon the owners and harborers and enforce the same by appropriate penalties; to authorize the destruction or sale of any domesticated animal, the owner or harborer of which shall neglect or refuse to pay such license tax; to provide for the erection of all needful pens and pounds within or without the city limits; and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same. [1967, ch. 429, § 55, p. 1249.]

STATUTORY NOTES

Cross References. — County dog license tax, § 25-2801.
Estrays, § 25-2301 et seq.

50-320. Cemeteries. — All cities shall have the following powers in regard to cemeteries:

A. Acquisition. — Purchase, hold and pay for, in the manner herein provided, lands not exceeding eighty (80) acres in one (1) body outside of the corporate limits, and all necessary grounds including any lands as have heretofore been laid out or platted and offered for sale for cemetery purposes, excepting such portions thereof as have been heretofore sold for cemetery purposes, hospital grounds or waterworks. For the purpose of purchasing such lands and maintaining the same, any city may levy a tax of not more than four hundredths percent (.04%) of the market value for assessment purposes in any one (1) year on all taxable property within the limits of the city, and exercise the right of eminent domain under the provisions of chapter 7 of title 7, Idaho Code, in the taking or securing of such grounds and property.

B. Improvement. — Survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds and streets owned by the city leading thereto; construct walks and protect ornamental trees therein and provide for paying the costs thereof.

C. Conveyance of lots. — Convey cemetery lots by certificates signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots, described therein by number as laid down on such map or plat. Such certificates shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to said lots for the sole purpose of interment, under the regulations of the city council. Such certificates shall be entitled to be recorded in the office of the county recorder of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

D. Regulation. — Limit the number of cemetery lots which may be owned by any person; prescribe rules for inclosing, adorning, and erecting monuments and tombstones on cemetery lots; prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein or the ornamentation of graves or of such lots.

E. Penalties. — Pass rules and ordinances imposing penalties and fines not exceeding the amount permissible in probate and justice courts, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereto and trespassers therein; and the officials of the city shall have as full jurisdiction and power in the enforcing of such rules as though they related to the corporation itself. [1967, ch. 429, § 39, p. 1249; am. 1995, ch. 82, § 23, p. 218.]

STATUTORY NOTES

Cross References. — Cemetery maintenance districts, § 27-101 et seq.

Compiler's Notes. — Probate and justice courts, referred to in subsection E, no longer

exist. Their functions have been assumed by the district and magistrate courts, pursuant to S.L. 1969, ch. 100.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Establishment and maintenance.

Taxation.

Establishment and Maintenance.

A cemetery may be established and conducted for profit, and the establishment and maintenance thereof by the public has also been authorized by the legislature. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

Taxation.

None of the property of the corporation involved, neither the lots sold for burial pur-

poses nor the unplatted acreage, was exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of former § 63-105M (now § 63-602F) so as to entitle it to be exempted from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

RESEARCH REFERENCES

A.L.R. — Zoning regulations in relation to cemeteries. 96 A.L.R.3d 921.

50-321. Aviation facilities — Acquisition, operation and maintenance. — Cities are hereby empowered: to acquire by purchase, gift, lease, sublease, or otherwise hold and take over such lands as the city council may deem necessary within or without the corporate limits whether within or without the county in which said city is located; do all things necessary in cooperation with the United States government in adapting any such lands so acquired to national defense purposes; and for the purpose of maintaining aviation facilities, to lease for aviation purposes, or any purposes connected therewith and incident thereto, all or any part of such land or lands, under such regulations and upon such terms and conditions as shall be established by the city council or otherwise established by law; to construct, operate and maintain, consistent with such regulations as may now exist or may hereafter be established by law, hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation facilities; to survey, plat, map, grade, ornament and otherwise improve such land, appurtenances, approaches, and avenues leading to or adjacent thereto; to provide for all costs and expenses incident or necessary to the exercise of the foregoing powers or the attainment of the foregoing objects out of the general fund of said city or in its discretion by special levy, in an amount not to exceed six hundredths percent (.06%) of the market value for assessment purposes in any one (1) year on all the taxable property within such city or by the issuance of bonds as provided by sections 50-1001 through 50-1042, Idaho Code. [1967, ch. 429, § 40, p. 1249; am. 1995, ch. 82, § 24, p. 218.]

STATUTORY NOTES

Cross References. — Aeronautics and aeronautic facilities, municipalities to cooperate with transportation department in development, § 21-104.

Aeronautics generally, title 21, Idaho Code.
Aeronautics laws, duty to aid in enforcement of, § 21-119.

Airports as part of national defense system, counties and municipalities may share in cost, §§ 21-403 to 21-406.

Airports, counties and municipalities authorized to cooperate, § 21-401 et seq.

Airports, state designation of, § 21-115.

Airport Zoning Act, § 21-501 et seq.

Airport Zoning Act, acquisition of ease-

ments to remove hazards, § 21-508.

Airport zoning authorized, § 21-106.

Aviation fields, airports, hangars and other air navigation facilities authority to acquire or construct, bond issues authorized, § 21-401.

Joint service functions, §§ 67-2326 — 67-2333.

Municipal airports, § 21-105.

Regional airports, § 21-801 et seq.

Tax levy authorized, § 21-404.

JUDICIAL DECISIONS

ANALYSIS

In general.

Firefighters.

In General.

Where repair and improvement of airport facility is essential for proper growth and development of area, funds expended for repair and improvement of airport facility are "ordinary and necessary expenses within the proviso of Art. VIII, § 3 of the Constitution." *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Firefighters.

The contract the city of Boise made with the Idaho national guard (IDANG) to provide air rescue fire fighting (ARFF) services at the Boise municipal airport did not violate the

Idaho constitution or the Idaho civil service act; however, the firefighters were entitled to collectively bargain in anticipation of the city's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and by refusing to negotiate with the union, the city violated the collective bargaining act, § 44-701 et seq. *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

Cited in: *Tomich v. City of Pocatello*, 127 Idaho 394, 901 P.2d 501 (1995); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006).

50-322. Transit systems. — Any city may, in the manner provided for acquiring other property, purchase, lease, or otherwise procure transit systems and provide by general ordinance for rules and regulations governing the maintenance and operation of the same. [1967, ch. 429, § 46, p. 1249.]

50-323. Domestic water systems. — Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses. [1967, ch. 429, § 20, p. 1249; am. 1979, ch. 304, § 1, p. 825.]

STATUTORY NOTES

Cross References. — Bond issues for water plants, § 50-1020.

JUDICIAL DECISIONS

ANALYSIS

Franchise authority.

Increase of rates.

Liability for charges incurred by tenants.

Franchise Authority.

It is undisputed that municipal corporations have the power to operate their own utility systems and provide water, power, light, gas and other utility services within the city limits, and the constitutional and statutory grant of franchise authority to the cities in this respect is not nullified or altered by § 40-1406. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Increase of Rates.

In the absence of any statutory or constitutional provision expressly or implicitly requiring that a municipality act by ordinance in the establishment and amendment of rates

charged for extending the city's water system, it was proper for a city to adopt the rate increase by resolution. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

Liability for Charges Incurred by Tenants.

A city did not have implied power to collect from a property owner for charges incurred by tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

Cited in: *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

OPINIONS OF ATTORNEY GENERAL

Under current law as expressed in *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870 (1984), and *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970), proposed improvements to

the Cascade water system would be ordinary and necessary expenses; therefore, art. 8, § 3, Idaho Const., would not require voter ratification of the debt. OAG 88-3.

50-324. Cities authorized to jointly purchase or lease, maintain or operate a joint water system. — All cities of this state are empowered by ordinance to negotiate for and purchase or lease, and to maintain and operate, in cooperation with adjoining cities of states bordering this state, the out of state water distribution system, plant and equipment of privately owned utilities used for the purpose of supplying water to the purchasing or leasing cities from an out of state source; provided, the legislature of the state in which such water distribution system, plant, equipment and supply are located, by enabling legislation, authorizes its cities to join in such purchase or lease, maintenance and operation. The city council of the cities acting jointly under this section shall have authority, by mutual agreement, to exercise jointly all powers granted to each individual city in the purchase or lease, maintenance and operation of a water supply system. [1967, ch. 429, § 21, p. 1249.]

STATUTORY NOTES

Cross References. — Joint service functions, §§ 67-2326 — 67-2333.

Joint water, power, or sewerage services, §§ 50-1022 — 50-1025.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Proprietary Capacity.

A municipal corporation, in the ownership, maintenance and operation of a municipal water system supplying water to its inhabit-

ants for pay, acted in a proprietary, not in a governmental, capacity. *Gilbert v. Bancroft*, 80 Idaho 186, 327 P.2d 378 (1958).

RESEARCH REFERENCES

Am. Jur. — 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions, §§ 196, 197.

50-325. Power plants — Power distribution. — (1) Cities shall have authority: to acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city, and to sell excess power subject to the provisions of section 50-327, Idaho Code.

(2) Any consumer of a municipal electric system may apply to the district court of the county where the consumer's service entrance is located for a determination that the municipality's charges for electric service to that consumer are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the municipality to alter or amend such rate in conformance with the determination of the court. [1967, ch. 429, § 22, p. 1249; am. 2001, ch. 29, § 15, p. 35.]

STATUTORY NOTES

Cross References. — Bond issues for light and power plants, § 50-1020.

Effective Dates. — Section 16 of S.L.

2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS

ANALYSIS

Franchise authority.

Liability for charges incurred by tenants.

Purchase of project capability.

Franchise Authority.

It is undisputed that municipal corporations have the power to operate their own utility systems and provide water, power, light, gas and other utility services within the city limits, and the constitutional and statutory grant of franchise authority to the cities in this respect is not nullified or altered by § 40-1406. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Liability for Charges Incurred by Tenants.

A city did not have implied power to collect from a property owner for charges incurred by

tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

Purchase of Project Capability.

There is no statutory authorization for the purchase of "project capability" where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired; the municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power, but is underwriting another entity's indebtedness in return for merely the possibility of electricity.

Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Agreement between cities and power company by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects,

did not come within ordinary and necessary proviso of Const., Art. VIII, § 3 and consequently was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the Constitution. Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

OPINIONS OF ATTORNEY GENERAL

The legislature has not given Idaho counties authority to produce and sell electric power. Therefore, Idaho counties lack authority to enter into an agreement with counties of

other states to develop a joint water project for the production and sale of hydroelectric power. OAG 89-1.

50-326. Water, light, power and gas plants — Leasing — Selling — Procedure. — Whenever any city in this state shall own its own water plant, water system, electric power plant or electric light and power transmission and electric distribution system or natural gas distribution system, the city council of such city may lease and sell such systems, provided, however, that before doing so, the question of leasing or selling such property shall be submitted to the qualified electors who pay taxes on real property within said city, at a special election held for that purpose, and if a majority of the votes cast at such election are in favor of leasing or selling such property, the city council may then lease or sell the same; but in case the majority of the votes cast at such special election shall be against the leasing or selling of such property, the city council shall have no power to lease or sell the same. The election to be called shall be held only after notice thereof has been published at least once a week for two (2) consecutive weeks, before the election, in the official newspaper of said city. Notice of such special election shall also be posted by the city clerk in three (3) public places in such city, at least ten (10) days before such special election. A city council may enter into agreements pursuant to this section to lease with the option to sell any plant or system described in this section. A city council may only terminate such lease/option to sell agreements during the term of the agreement for default by the entity leasing such plant or system. Such lease/option to sell agreements are subject to the voter approval requirements of this section. [1967, ch. 429, § 23, p. 1249; am. 1999, ch. 216, § 1, p. 576.]

50-327. Sale of excess power. — Any city of the state of Idaho owning or controlling a power plant may sell its excess power to persons and corporations for any lawful purpose. The term “excess power” means all electricity not needed by the city or the inhabitants thereof. All charges or rates for the excess power shall be fixed by ordinance and shall be uniform and fair to all consumers and no discrimination shall be allowed or practiced by any city; provided, that any city which may desire to take advantage of the provisions of this section may only contract with consumers as to excess power. Under this section all contracts with consumers are to be drafted

subject to the foregoing provision and no contract shall be for a period longer than five (5) years. [1967, ch. 429, § 24, p. 1249.]

JUDICIAL DECISIONS

Cited in: Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983).

50-328. Utility transmission systems — Regulations. — All cities shall have power to permit, authorize, provide for and regulate the erection, maintenance and removal of utility transmission systems, and the laying and use of underground conduits or subways for the same in, under, upon or over the streets, alleys, public parks and public places of said city; and in, under, over and upon any lands owned or under the control of such city, whether they may be within or without the city limits. [1967, ch. 429, § 50, p. 1249.]

JUDICIAL DECISIONS

Authority over All Lands.

This section, which expressly addresses the regulation of utility transmission systems, gives a city the authority over all lands, not

solely the public streets, which are owned or under control of such city. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

OPINIONS OF ATTORNEY GENERAL

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal

law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

50-329. Franchise ordinances — Regulations. — No ordinance granting a franchise in any city shall be passed on the day of its introduction, nor for thirty (30) days thereafter, nor until such ordinance shall have been published in at least one (1) issue of the official newspaper of the city; and after such publication, such proposed ordinance shall not thereafter and before its passage be amended in any particular wherein the amendment shall impose terms, conditions or privileges less favorable to the city than the proposed ordinance as published; but amendments favorable to the city may be made at any time and after publication; provided that an ordinance granting a franchise to lay a spur, railroad track or tracks connecting manufacturing plants, warehouses or other private property with a main railroad line, need not be published before the same is passed by the council. No franchise shall be created or granted by the city council otherwise than by ordinance, and the passage of any such ordinance shall require the affirmative vote of one-half (1/2) plus one (1) of the members of the full council. Franchises created or granted by the city council for electric, natural gas or water public utilities, as defined in chapter 1, title 61, Idaho Code, or to cooperative electrical associations, as defined in section 63-3501(a), Idaho Code, shall be for terms of not less than ten (10) years and not greater than fifty (50) years unless otherwise agreed to by the utility or cooperative electrical association. All publications of ordinances granting a

franchise, both before and after passage, shall be made at the expense of the applicant or grantee. Where an ordinance granting a franchise is sought to be amended after the same has been in force, the provisions of this section as to publication, before final action upon such amendment, shall apply as in cases of proposed ordinances granting original franchises. [1967, ch. 429, § 25, p. 1249; am. 1995, ch. 226, § 1, p. 777.]

JUDICIAL DECISIONS

ANALYSIS

Objection to franchise, estoppel.

Presumptions.

Relation to highway district legislation.

Objection to Franchise, Estoppel.

Where plaintiffs participated in the bidding and award of cable television franchise process by city and no protest was made by the plaintiffs when the several city governments banded together to form the committee to investigate the award and recommend the franchise, nor any objection was lodged against the prospect of the various cities granting franchises, the trial court did not err in holding that the plaintiffs were estopped from pursuing collateral attacks upon grant of franchise to others or upon ordinance or upon any other known defect. *KTVB, Inc. v. Boise City*, 94 Idaho 279, 486 P.2d 992 (1971).

Presumptions.

Franchise ordinances are presumed valid with the burden on those challenging the ordinance to prove their invalidity. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Relation to Highway District Legislation.

The highway district legislation contained in title 40, chapters 13 and 14, does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

OPINIONS OF ATTORNEY GENERAL

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal

law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

50-329A. Franchise ordinances — Fees. — (1) This section applies to franchises granted by cities to electric, natural gas and water public utilities, as defined in chapter 1, title 61, Idaho Code, and to cooperative electrical associations, as defined in subsection (a) of section 63-3501, Idaho Code, which provide service to customers in Idaho and which shall also be known as “public service providers” for purposes of this section. Notwithstanding any other provision of law to the contrary, cities may include franchise fees in franchises granted to public service providers, only in accordance with the following terms and conditions:

(a) Franchise fees assessed by cities upon a public service provider shall not exceed one percent (1%) of the public service provider’s “gross revenues” received within the city without the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. In no case shall the franchise fee exceed three percent (3%), unless a greater franchise fee is being paid under an existing franchise agreement, in which case the franchise agreement may be renewed at up

to the greater percentage, with the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. For purposes of this section, "gross revenues" shall mean the amount of money billed by the public service provider for the sale, transmission and/or distribution of electricity, natural gas or water within the city to customers less uncollectibles.

(b) Franchise fees shall be collected by the public service provider from its customers within the city, by assessing the franchise fee percentage on the amounts billed to customers for the sale, transmission and/or distribution of electricity, natural gas or water by the public service provider within the city. The franchise fee shall be separately itemized on the public service provider's billings to customers.

(c) Cities collecting franchise fees shall also be allowed to collect user fees from consumers located within the city in the event such consumers purchase electricity, natural gas or water commodities and services from a party other than the public service provider. The user fee shall be assessed on the purchase price of the commodities or services, including transportation or other charges, paid by the consumer to the seller and shall be collected by the city from the consumer. Except as provided in this subsection, user fees shall be subject to all of the same terms, rates, conditions and limitations as the franchise fee in effect in the city and as provided for in this section. This subsection shall not apply to a consumer to the extent that consumer is purchasing commodities and services from a party other than the public service provider on the effective date of this act [March 14, 1996], only until such time that the existing franchise agreement for the city in which the consumer is located either expires or is renegotiated.

(d) Franchise fees shall be paid by public service providers within thirty (30) days of the end of each calendar quarter.

(e) Franchise fees paid by public service providers will be in lieu of and as payment for any tax or fee imposed by a city on a public service provider by virtue of its status as a public service provider including, but not limited to, taxes, fees or charges related to easements, franchises, rights-of-way, utility lines and equipment installation, maintenance and removal during the term of the public service provider's franchise with the city.

(2) This section shall not affect franchise agreements which are executed and agreed to by cities and public service providers with an effective date prior to the effective date of this act [March 20, 1995]. [I.C., § 50-329A, as added by 1995, ch. 226, § 2, p. 777; am. 1996, ch. 246, § 1, p. 776.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions in paragraphs (1)(c) and subsection (2) were added by the compiler to provide clarity.

Effective Dates. — Section 3 of S.L. 1995, ch. 226 declared an emergency. Approved March 20, 1995.

Section 2 of S.L. 1996, ch. 246 declared an emergency and provided that the act shall be in full force and effect on and after its passage and approval and retroactive to January 1, 1996. Approved March 14, 1996.

50-330. Rates of franchise holders — Regulations. — Cities shall have power to regulate the fares, rates, rentals or charges made for the service rendered under any franchise granted in such city, except such as are subject to regulation by the public utilities commission. [1967, ch. 429, § 26, p. 1249.]

STATUTORY NOTES

Cross References. — Public utilities commission, § 61-201 et seq.

OPINIONS OF ATTORNEY GENERAL

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal

law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

50-331. Control of waters. — Cities may establish, alter and change the channels of watercourses and wall or cover the same within the boundaries of the city and outside the corporate limits to the extent necessary to preserve the watercourse. [1967, ch. 429, § 52, p. 1249.]

50-332. Control of sewers and drains. — Cities are authorized to clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain or sewer or any watercourse in such city when not declared, by law, to be navigable and, as provided in section 50-1008[, Idaho Code], assess the expense thereof in whole or in part to the property specially benefited thereby. [1967, ch. 429, § 58, p. 1249.]

STATUTORY NOTES

Cross References. — Eminent domain, drainage of cities and villages, § 7-701.

tion was added by the compiler to correct the statutory citation style.

Compiler's Notes. — The bracketed inser-

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Changing ditch channels.
Extension of street across lawful ditch.
Irrigation ditch.

Changing Ditch Channels.

A city was entitled to alter or change the channel of a ditch carrying irrigation waters through the townsite at its own expense and sole discretion. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

Extension of Street Across Lawful Ditch.

It was duty of city to cover ditch running alongside street if it was considered dangerous, or otherwise to protect people from such

danger. *City of Twin Falls v. Harlan*, 27 Idaho 769, 151 P. 1191 (1915).

Where ditch had been constructed and operated in accordance with law, it was not nuisance, and could become one only by reason of manner in which it had been maintained and operated. Fact that municipality subsequently extended street along and included in it right of way for such ditch did not convert such ditch into a nuisance. *City of*

Twin Falls v. Harlan, 27 Idaho 769, 151 P. 1191 (1915).

Irrigation Ditch.

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend

on appeal that it was authorized to control alleys, streets, sewers and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

RESEARCH REFERENCES

A.L.R. — Liability of abutting landowner for injury to municipal employee engaged in constructing or repairing sewers or drains. 58 A.L.R.3d 1085.

Compensation for diminution in value of the remainder of property resulting from tak-

ing or use of adjoining land of others for the same undertaking. 59 A.L.R.3d 488.

Validity and construction of regulation by municipal corporation fixing sewer-use rates. 61 A.L.R.3d 1236.

50-333. Flood prevention — Drainage. — Cities are authorized to prevent the flooding of the city or to secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the city limits, when necessary to protect the safety of life and property of the city. Any city shall have power to cause any parcel of land within its limits on which water may at any time become stagnant to be filled or drained in such manner as may be directed by a resolution of the council, and such owner or his agent shall, after service of a copy of such resolution, comply with the directions of such resolution within the time therein specified; and in case of failure or refusal to do so, it may be done by said city and the amount of money so expended shall be assessed against such property and the amount thereof collected as special assessments under section 50-1008[, Idaho Code]. [1967, ch. 429, § 59, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion at the end of the section was added by the

compiler to correct the statutory citation style.

50-334. Abatement of nuisances. — Cities are empowered to declare what shall be deemed nuisances, to prevent, remove and abate nuisances at the expense of the parties creating, causing, committing or maintaining the same, to levy a special assessment as provided in section 50-1012 [50-1008, Idaho Code], on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same, and this power shall extend three (3) miles beyond the city limits, provided however, that the expense declaring, preventing, removing and abating nuisances outside the city limits shall rest with the city when the nuisance comes within the three (3) mile area by reason of expansion of city boundaries. [1967, ch. 429, § 60, p. 1249; am. 1967, ch. 431, § 1, p. 1417.]

STATUTORY NOTES

Cross References. — Abatement of moral nuisances, § 52-401 et seq.

Nuisances generally, title 52, Idaho Code.

Repression of prostitution under health laws, § 39-603.

Compiler's Notes. — The reference to

§ 50-1012 in the section, which appeared in S.L. 1967, ch. 431 as a reference to § 172, appears to be in error and, therefore, the bracketed reference to § 50-1008 has been inserted by the compiler, as the probable intended reference.

JUDICIAL DECISIONS

Cited in: Roell v. Boise City, 130 Idaho 199, 938 P.2d 1237 (1997).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Abatement of nuisances.
Declaring a nuisance.

Abatement of Nuisances.

While village might have abated nuisance within its limits, if it wished to abate nuisance outside its boundaries, it was proper and probably necessary for it to apply to a court of equity. Village of Am. Falls v. West, 26 Idaho 301, 142 P. 42 (1914).

Declaring a Nuisance.

City may have declared anything a nuisance which was such in fact or per accidens, as well as that which was a nuisance per se. Rowe v. City of Pocatello, 70 Idaho 343, 218 P.2d 695 (1950).

50-335. Destruction of buildings inimical to safety and health. — All cities in the state of Idaho shall have power to declare any building or structure to be a nuisance which, in the opinion of the city council, is so dilapidated or is in such condition as to menace the public health or the safety of persons or property on account of increased fire hazard or otherwise; and any council may cause the destruction or removal of any such building or structure at the expense of the person or persons, associations, corporations or copartnerships holding, owning or maintaining the same, and to levy a special assessment as provided in section 50-1008[, Idaho Code], on the land or premises whereon the nuisance is situated, to defray the cost or to reimburse the city for the cost of destruction or removal of said building or structure so declared to be a nuisance. [1967, ch. 429, § 61, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion near the end of the section was inserted

by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Instruction.
Liability for improper destruction.
Nature of hazard.

Instruction.

The instruction given by the trial court to the effect that, if the building was in fact a nuisance, the city had the burden of showing it gave the property owner reasonable notice and opportunity to repair and remove the structure and if the city failed to give such notice and provide such opportunity before destroying the building, it was liable for damages, was a correct statement of the law. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

Liability for Improper Destruction.

Where the city ordered a building summarily destroyed which was not a nuisance per se, it did so at its peril, and, if it was found the structure was not in fact a nuisance, the owner might recover damages. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

Nature of Hazard.

Even though the building was littered with debris, and transients were living there and using candles and cigarettes creating a fire hazard, these conditions being caused by the use to which the house was put were not hazards inherent in the building itself; therefore, the building could not be destroyed as a nuisance by the city, it being apparent such hazardous condition could be remedied by cleaning and repairs without major reconstruction. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

To be lawfully destroyed as a nuisance, a building must be a nuisance per se or in fact. If it is neither, it cannot be made a nuisance by declaration of the city council. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

RESEARCH REFERENCES

A.L.R. — Validity and construction of statute or ordinance providing for repair or destruction of residential building by public

authorities at owner's expense. 43 A.L.R.3d 916.

50-336 — 50-340. Joint service functions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1967, ch. 429, §§ 62-66,

were repealed by S.L. 1970, ch. 38, § 9. For present law see §§ 67-2326 — 67-2333.

50-341. Competitive bidding — Application of law. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1967, ch. 429, § 67, p. 1249; am. 1975, ch. 34, § 1, p. 60; am. 1979, ch. 62, § 1, p. 165; am. 1981, ch. 289, § 2, p. 595; am. 1983, ch. 89, § 3, p. 185; am. 1984, ch. 136,

§ 1, p. 321; am. 1987, ch. 161, § 1, p. 316; am. 1995, ch. 164, § 1, p. 644; am. 1998, ch. 397, § 2, p. 1241, was repealed by S.L. 2005, ch. 213, § 17.

50-342. Electric power — Purchase or disposal. — In addition to the powers otherwise conferred on cities of this state, a city owning and operating an electric distribution system shall have the authority to:

(a) Purchase, or generate, or both, electric power and energy for the purpose of disposing of such power and energy to the United States of America, department of energy, acting by and through the Bonneville power administration, or its successor, through exchange, net billing or any arrangement which is used for supplying the needs of the city for electric power or energy;

(b) Enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or

energy upon such terms and conditions as shall be specified in the power sales or purchase contract; and

(c) Establish, operate and fund energy conservation or other public purpose programs for the purpose of promoting efficient use of energy and energy conservation by city consumers including, but not limited to, programs to install energy efficient and energy conservation devices or measures in consumer buildings and structures served by the city and to grant low-interest loans to city consumers for the installation of such measures, provided such measures are provided on a nondiscriminatory basis to all classes of customers similarly situated;

and such authority shall not be subject to the requirements, limitations, or procedures contained in sections 50-325, 50-327 and chapter 28, title 67, Idaho Code. [I.C., § 50-342, as added by 1971, ch. 31, § 1, p. 75; am. 1981, ch. 30, § 1, p. 48; am. 1982, ch. 194, § 1, p. 521; am. 1999, ch. 283, § 1, p. 705; am. 2005, ch. 213, § 18, p. 637.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1981, ch. 30 declared an emergency. Approved March 17, 1981.

JUDICIAL DECISIONS

Purchase of Project Capability.

There is no statutory authorization for the purchase of "project capability" where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired; the municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power but is underwriting another entity's indebtedness in return for merely the possibility of electricity. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Agreement between cities and power com-

pany by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects, did not come within ordinary and necessary proviso of Const., Art. VIII, § 3 and consequently, was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the constitution. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

50-342A. Participation in generation and transmission projects.

— (1) It is hereby determined and declared that securing long-term electric generation and transmission resources at cost-based rates is essential to the ability of municipal utilities to provide reliable and economic electric services at stable prices to the consumers and communities they serve and is essential to the economy and the economic development of their communities and to the public health, safety and welfare. It is further determined and declared that in order to facilitate the development of such cost-based resources, it is necessary and desirable that municipal electrical utilities have sufficient flexibility and statutory authority to pay the ordinary and necessary expenses associated with the operation and maintenance of such cost-based resources.

(2) When used in this section the following terms shall have the following meanings:

(a) "Joint electric facilities" means all works, facilities and property necessary or useful in the generation or transmission of electric power and energy.

(b) "Participants" means a city and the other parties to a participation agreement, including municipalities or public agencies of other states who have authority to own, construct, develop and operate joint electric facilities under the laws of such state.

(c) "Participation agreement" means:

- (i) An agreement providing for the joint ownership and operation of joint electric facilities; or
- (ii) A long-term power purchase agreement providing for the right to receive a share of the capacity or output of joint electric facilities at cost-based rates.

(3) In order to obtain long-term electric generation and transmission resources at cost-based rates, a city that owns and operates a municipal electric utility system may acquire an undivided ownership interest in, or a contractual right to the capacity, output or services of, joint electric facilities under a participation agreement with one (1) or more investor-owned, cooperative or municipal utilities or with other entities engaged in the generation or transmission of electricity. Prior to entering into any participation agreement, the governing body of the city shall consider:

- (a) The city's long-term power supply and transmission requirements;
- (b) The efficiencies and economies of scale expected to be achieved by participating with others in the acquisition or construction of joint electric facilities;
- (c) The estimated cost, commercial operation date and useful life of the joint electric facilities;
- (d) The financial, regulatory and technical feasibility of constructing and operating such joint electric facilities; and
- (e) The availability, reliability and cost of existing or alternate power supply and transmission resources.

In order to facilitate such consideration, the city may retain engineering, financial or other consultants to provide advice and recommendations concerning such long-term power supply or transmission facilities and in such event, all written reports prepared by such consultants shall be made a matter of record and be available to the public in accordance with the provisions of the Idaho public records act.

(4) Each participation agreement shall include provisions regarding:

- (a) The specific joint or undivided ownership interests of the participants in the joint electric facilities or the specific contractual rights of the participants to the capacity, output or services of the joint electric facilities, any restrictions on the right of the participants to withdraw from participation in the operation of the joint electric facilities or restrictions upon transfer or partition of such interests or rights and the method for allocating the capacity or output of the joint electric facilities among the participants;

(b) The creation of a management committee comprised of representatives of the participants which shall be responsible for the governance of the acquisition, construction and operation of the joint electric facilities, and provisions granting each participant voting rights proportional to its percentage entitlement to the output or capacity of such joint electric facilities;

(c) The acquisition, construction and operation of the joint electric facilities and the appointment of construction and operation managers and agents and the employment of personnel in connection with the joint electric facilities, which may include provisions for the indemnification of such managers, agents and personnel;

(d) The methods for financing the costs of acquisition, construction and operation of the joint electric facilities, which may include provisions obligating or enabling each participant to finance its proportional share of such costs, based on its ownership interest in or contractual rights to the joint electric facilities;

(e) The allocation of the costs of acquisition, construction and operation of the joint electric facilities among the participants proportional to the percentage entitlement to the output or capacity of such joint electric facilities and the specific obligations of the participants to pay such costs, which may include a provision obligating each participant to pay its respective share of all costs of the joint electric facilities regardless of whether such facilities are acquired, completed, operable or operating and notwithstanding the suspension or reduction of the capacity, output or services of the joint electric facilities for any reason;

(f) The remedies upon a default by any participant in the performance of its obligations under the participation agreement, which may include a provision obligating or enabling the other participants to succeed to all or a portion of the ownership interest or contractual rights and obligations of the defaulting participant;

(g) The liabilities of the participants, which shall be several and not joint and no participant shall be obligated for the acts, omissions or obligations of any other participant; and

(h) The amendment and termination of the agreement, and for the decommissioning of the joint electric facilities and the funding of the costs thereof.

(5) A city may finance its proportionate share of the acquisition, construction and operation costs of joint electric facilities through the issuance of its bonds as provided by law or through financing arrangements with the Idaho energy resources authority under chapter 89, title 67, Idaho Code. [I.C., § 50-342A, as added by 2007, ch. 28, § 1, p. 55.]

STATUTORY NOTES

Cross References. — Idaho public records act, § 9-301 et seq.

Compiler's Notes. — Section 2 of S.L. 2007, ch. 28 provided "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or

the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

Effective Dates. — Section 3 of S.L. 2007,

ch. 28 declared an emergency. Approved February 23, 2007.

50-343. Regulation of firearms — Control by state. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 50-343, as added by S.L. 1984, ch. 243, § 2, p. 590, was repealed by S.L. 2008, ch. 304, § 1, effective March 28, 2008. For present comparable provisions, see § 18-3302J.

50-344. Solid waste disposal. — (1) Cities shall have the power to maintain and operate solid waste collection systems. Such maintenance and operation may, by exclusive or nonexclusive means, be performed by:

- (a) Employees, facilities, equipment and supplies engaged or acquired by cities;
- (b) Contracts, franchises or otherwise providing maintenance and operation performed by private persons;
- (c) Contracts providing for maintenance and operation performed by another unit of government;
- (d) Contracts, franchises or otherwise for maintenance and operation that may provide solid waste collection for all or geographic parts of a city;
- (e) Any combination of paragraphs (a), (b), (c), and (d) of this section [subsection].

(2) Upon a finding by the mayor or city manager for public safety or necessary protection of public health and welfare and property, the provisions of chapter 28, title 67, Idaho Code, shall not apply to solid waste collection, as provided herein.

(3) Before entering into such contracts, franchises or otherwise, a city may require such security for the performance thereof as it deems appropriate or may waive such undertaking. [I.C., § 50-344, as added by 1986, ch. 19, § 1, p. 59; am. 2004, ch. 144, § 2, p. 473; am. 2005, ch. 213, § 19, p. 637.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in paragraph (1)(e) was added by the compiler to provide clarity.

JUDICIAL DECISIONS

Exclusive Franchise.

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Const. Art. XII, § 2 and, under § 48-107(c), it is afforded a statutory exemption from the

Idaho Competition Act. Since this section does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. *Plummer v. City of Fruitland*, 139 Idaho 810, 87 P.3d 297 (2004).

50-345. Computerized mapping system fees. — (1) As used in this section, "computerized mapping system" or "system" means the digital storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography,

water, streets and geographic features.

(2) In a city which develops a computerized mapping system, the city council may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to official paper maps produced from the computerized mapping system. [I.C., § 50-345, as added by 1995, ch. 129, § 1, p. 562.]

CHAPTER 4

MUNICIPAL ELECTIONS

SECTION.

- 50-401. Short title.
- 50-402. Definitions. [Effective until January 1, 2011.]
- 50-402. Definitions. [Effective January 1, 2011.]
- 50-403. Supervision of administration of election laws by city clerk. [Effective until January 1, 2011.]
- 50-403. Supervision of administration of election laws by county clerk. [Effective January 1, 2011.]
- 50-404. Powers of city clerk. [Effective until January 1, 2011.]
- 50-404. Registration of electors. [Effective January 1, 2011.]
- 50-405. Office of city clerk open as long as polls open. [Effective until January 1, 2011.]
- 50-405. General and special city elections. [Effective January 1, 2011.]
- 50-406. Appeals by aggrieved persons. [Effective until January 1, 2011.]
- 50-406. Method of nomination — Clerk to furnish printed forms. [Effective January 1, 2011.]
- 50-407. Establishment of election precincts. [Effective until January 1, 2011.]
- 50-407. Form of declaration of candidacy. [Effective January 1, 2011.]
- 50-408. Designation of polling places. [Repealed, effective January 1, 2011.]
- 50-409. Appointment of election judges and clerks. [Repealed, effective January 1, 2011.]
- 50-410. Challengers — Watchers. [Effective until January 1, 2011.]
- 50-410. Time and manner of filing declarations. [Effective January 1, 2011.]
- 50-411. Electors privileged from arrest during attendance at polling place — Exception. [Effective until January 1, 2011.]

SECTION.

- 50-411. Notice of candidate filing deadline. [Effective January 1, 2011.]
- 50-412. Disqualified electors not permitted to vote. [Effective until January 1, 2011.]
- 50-412. Canvassing votes — Determining results of election. [Effective January 1, 2011.]
- 50-413. Tie votes. [Effective January 1, 2011.]
- 50-414. Registration of electors. [Amended and Redesignated, effective January 1, 2011.]
- 50-414. Failure to qualify creates vacancy. [Effective January 1, 2011.]
- 50-415. Gain or loss of residence by reason of absence from city. [Effective until January 1, 2011.]
- 50-415. Certificates of elections. [Effective January 1, 2011.]
- 50-416. Application for recount of ballots. [Effective January 1, 2011.]
- 50-417. Recall elections. [Effective January 1, 2011.]
- 50-418. Initiative and referendum elections. [Effective January 1, 2011.]
- 50-419. Election law violations. [Effective January 1, 2011.]
- 50-420. Application of campaign reporting law to elections in certain cities. [Effective January 1, 2011.]
- 50-421 — 50-426. [Repealed.]
- 50-427. Challenges of entries in combination election record and poll book. [Repealed, effective January 1, 2011.]
- 50-428. Combination election record and poll book. [Repealed, effective January 1, 2011.]
- 50-429. General and special city elections. [Amended and Redesignated, effective January 1, 2011.]
- 50-430. Method of nomination — Clerk to furnish printed forms.

SECTION.

- [Amended and Redesignated, effective January 1, 2011.]
- 50-431. Form of declaration of candidacy. [Amended and Redesignated, effective January 1, 2011.]
- 50-432. Time and manner of filing declarations. [Amended and Redesignated, effective January 1, 2011.]
- 50-433 — 50-434. [Repealed.]
- 50-435. Notice of candidate filing deadline. [Amended and Redesignated, effective January 1, 2011.]
- 50-436. Notice of election — Contents — Publication. [Repealed, effective January 1, 2011.]
- 50-437. Official election stamp. [Repealed, effective January 1, 2011.]
- 50-438. Ballots and election supplies. [Repealed, effective January 1, 2011.]
- 50-439. Preparation and contents of ballot. [Repealed, effective January 1, 2011.]
- 50-440. Sample ballots. [Repealed, effective January 1, 2011.]
- 50-441. Procedure for correction of ballots after printing. [Repealed, effective January 1, 2011.]
- 50-442. Voting by absentee ballot authorized. [Repealed, effective January 1, 2011.]
- 50-443. Application for absentee ballot. [Repealed, effective January 1, 2011.]
- 50-444. [Repealed.]
- 50-445. Issuance of absentee ballot. [Repealed, effective January 1, 2011.]
- 50-446. Marking and folding of absentee ballot — Affidavit. [Repealed, effective January 1, 2011.]
- 50-447. Return of absentee ballot. [Repealed, effective January 1, 2011.]
- 50-448. City clerks shall provide an absent elector's voting place. [Repealed, effective January 1, 2011.]
- 50-449. Transmission of absentee ballots to polls. [Repealed, effective January 1, 2011.]
- 50-450. Deposit of absentee ballots. [Repealed, effective January 1, 2011.]
- 50-451. Record of applications for absentee ballots. [Repealed, effective January 1, 2011.]
- 50-452. Duties of city clerk on election day. [Repealed, effective January 1, 2011.]
- 50-453. Opening and closing polls. [Repealed, effective January 1, 2011.]
- 50-454. Changing polling place — Proclama-

SECTION.

- tion and notice. [Repealed, effective January 1, 2011.]
- 50-455. Opening ballot boxes. [Repealed, effective January 1, 2011.]
- 50-456. Judges may administer oaths — Challenge of voters. [Repealed, effective January 1, 2011.]
- 50-457. Enforcement duties of judge. [Repealed, effective January 1, 2011.]
- 50-458. Signing combination election record and poll book — Delivery of ballot to elector. [Repealed, effective January 1, 2011.]
- 50-459. Manner of voting. [Repealed, effective January 1, 2011.]
- 50-460. Assistance to voter. [Repealed, effective January 1, 2011.]
- 50-461. Spoiled ballots. [Repealed, effective January 1, 2011.]
- 50-462. Officers not to divulge information. [Repealed, effective January 1, 2011.]
- 50-463. Counting of votes. [Repealed, effective January 1, 2011.]
- 50-464. Comparison of poll lists and ballots — Void ballots. [Repealed, effective January 1, 2011.]
- 50-465. Counting of ballots. [Repealed, effective January 1, 2011.]
- 50-466. Transmission of supplies to city clerk. [Repealed, effective January 1, 2011.]
- 50-467. Canvassing votes — Determining results of election. [Amended and Redesignated, effective January 1, 2011.]
- 50-468. Tie votes. [Amended and Redesignated, effective January 1, 2011.]
- 50-469. Failure to qualify creates vacancy. [Amended and Redesignated, effective January 1, 2011.]
- 50-470. Certificates of elections. [Amended and Redesignated, effective January 1, 2011.]
- 50-471. Application for recount of ballots. [Amended and Redesignated, effective January 1, 2011.]
- 50-472. Recall elections. [Amended and Redesignated, effective January 1, 2011.]
- 50-473. Initiative and referendum elections. [Amended and Redesignated, effective January 1, 2011.]
- 50-474. Voting by machine or vote tally system. [Repealed, effective January 1, 2011.]
- 50-475. Election law violations. [Amended and Redesignated, effective January 1, 2011.]
- 50-476. [Repealed.]

SECTION.

50-477. Application of campaign reporting law to elections in certain cities. [Amended and Redesig-

SECTION.

nated, effective January 1, 2011.]
50-478, 50-479. [Repealed.]

50-401. Short title. — This chapter shall be known and cited as the “Idaho Municipal Election Laws.” [I.C., § 50-401, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-401 — 50-413, 50-415, which comprised S.L. 1967, ch. 429, §§ 75-84, 86, 87, 89, 96, p. 1249; I.C., § 50-411, as added by 1973, ch. 303, § 2, p. 645; am. 1975, ch. 94, § 1, p. 191, were

repealed by S.L. 1978, ch. 329, § 1.

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

50-402. Definitions. [Effective until January 1, 2011.] — The following words and phrases when used in this chapter, have the meanings respectively given herein.

(a) General election. “General election” means the election held on the first Tuesday succeeding the first Monday in November in each odd-numbered year at which there shall be chosen all mayors and councilmen as are by law to be elected in such years.

(b) Special election. “Special election” means any election other than a general election held at any time for any purpose provided by law.

(c) Qualified elector. A “qualified elector” means any person who is eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote and who is registered within the time period provided by law. A “qualified elector” shall also mean any person who is eighteen (18) years of age, is a United States citizen, who is a registered voter, and who resides in an area that the city has annexed pursuant to chapter 2, title 50, Idaho Code, within thirty (30) days of a city election.

(d) Residence.

(1) “Residence” for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

(2) A qualified elector shall not be considered to have gained residence in any city of this state into which he comes for temporary purposes only without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(3) A qualified elector who has left his home and gone to another area outside the city, for a temporary purpose only shall not be considered to have lost his residence.

(4) If a qualified elector moves outside the city, with the intentions of making it his permanent home, he shall be considered to have lost his residence in the city.

(e) Election official. "Election official" means the city clerk, registrar, judge of election, clerk of election, or constable engaged in the performance of election duties as required by this act.

(f) Election register. The "election register" means the voter registration cards of all electors who are qualified to appear and vote at the designated polling places.

(g) Combination election record and poll book. "Combination election record and poll book" is the book containing a listing of registered electors who are qualified to appear and vote at the designated polling places.

(h) Tally book. The "tally book" or "tally list" means the forms in which the votes cast for any candidate or special question are counted and totaled at the polling precinct.

(i) Reference to male. All references to the male elector and male city officials include the female elector and female city officials and the masculine pronoun includes the feminine.

(j) Computation of time. Calendar days shall be used in all computations of time made under the provision of this act. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Saturdays, Sundays and legal holidays shall be included, but if the time for any act to be done shall fall on Saturday, Sunday or a legal holiday, such act shall be done upon the day following each Saturday, Sunday or legal holiday. [I.C., § 50-402, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 81, § 1, p. 148; am. 1983, ch. 45, § 1, p. 115; am. 1994, ch. 66, § 1, p. 135; am. 2002, ch. 75, § 2, p. 164.]

STATUTORY NOTES

Prior Laws. — Former § 50-402 was repealed. See Prior Laws, § 50-401.

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-402.

The words "this act" in subsections (e) and (j) refer to S.L. 1978, ch. 329, compiled as §§ 50-401 to 50-412, 50-415, 50-427 to 50-

432, 50-436 to 50-443, 50-445 to 50-458, and 50-460 to 50-476. Probably, the reference should be to "this chapter", being chapter 4, title 50, Idaho Code.

Effective Dates. — Section 2 of S.L. 1994, ch. 66 declared an emergency. Approved March 7, 1994.

50-402. Definitions. [Effective January 1, 2011.] — The following words and phrases when used in this chapter, have the meanings respectively given herein.

(a) General election. "General election" means the election held on the first Tuesday succeeding the first Monday in November in each odd-numbered year at which there shall be chosen all mayors and councilmen as are by law to be elected in such years.

(b) Special election. "Special election" means any election other than a general election held at any time for any purpose provided by law.

(c) Qualified elector. A "qualified elector" means any person who is at least eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote and who is registered within the time period provided by law. A "qualified elector" shall also mean any person who is at least eighteen (18) years of age, is a United States citizen, who is a registered voter, and who resides in an area that the city has annexed pursuant to chapter 2, title 50, Idaho Code, within thirty (30) days of a city election.

(d) Residence.

(1) "Residence" for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

(2) A qualified elector shall not be considered to have gained residence in any city of this state into which he comes for temporary purposes only without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(3) A qualified elector who has left his home and gone to another area outside the city, for a temporary purpose only shall not be considered to have lost his residence.

(4) If a qualified elector moves outside the city, with the intentions of making it his permanent home, he shall be considered to have lost his residence in the city.

(e) Election official. "Election official" means the city clerk, registrar, judge of election, clerk of election, or county clerk engaged in the performance of election duties.

(f) Reference to male. All references to the male elector and male city officials include the female elector and female city officials and the masculine pronoun includes the feminine.

(g) Computation of time. Calendar days shall be used in all computations of time made under the provisions of this chapter. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Saturdays, Sundays and legal holidays shall be included, but if the time for any act to be done shall fall on Saturday, Sunday or a legal holiday, such act shall be done upon the day following each Saturday, Sunday or legal holiday. [I.C., § 50-402, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 81, § 1, p. 148; am. 1983, ch. 45, § 1, p. 115; am. 1994, ch. 66, § 1, p. 135; am. 2002, ch. 75, § 2, p. 164; am. 2009, ch. 341, § 102, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in subsection (c), twice inserted “at least” preceding “eighteen (18) years of age”; in subsection (e), substituted “county clerk” for “constable,” and deleted “as required by this act” from the end; deleted subsections (f) through (h), which were the definitions for “election register,” “combination election record and poll book,” and “tally book,” and

made related redesignations; and, in present subsection (g), substituted “provisions of this chapter” for “provision of this act.”

Compiler’s Notes. — For this section as until effective January 1, 2011, see the preceding section, also numbered § 50-402.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-403. Supervision of administration of election laws by city clerk. [Effective until January 1, 2011.] — Each city clerk is the chief elections officer and shall exercise general supervision of the administration of the election laws in his city for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity. The city clerk shall meet with and issue instructions to election judges and clerks prior to the opening of the polls to ensure uniformity in the application, operation and interpretation of the election laws during the election.

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of this chapter impossible or unreasonable, the city clerk may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in city elections. [I.C., § 50-403, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 11, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 50-403 was repealed. See Prior Laws, § 50-401.

Amendments. — The 2007 amendment, by ch. 202, added the last paragraph.

Compiler’s Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-403.

50-403. Supervision of administration of election laws by county clerk. [Effective January 1, 2011.] — For each city, the county clerk of the county is the chief elections officer and shall exercise general supervision of the administration of the election laws in the city for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity. The county clerk shall meet with and issue instructions to election judges and clerks prior to the opening of the polls to ensure uniformity in the application, operation and interpretation of the election laws during the election. [I.C., § 50-403, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 11, p. 620; am. 2009, ch. 341, § 103, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the section catchline and in the last sentence, substituted “county clerk” for “city clerk”; in the first sentence, substituted

“For each city, the county clerk of the county is the chief elections officer” for “Each city clerk is the chief elections officer”; and deleted the last paragraph, which dealt with emer-

gency procedures handled by the city clerk.

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-403.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-404. Powers of city clerk. [Effective until January 1, 2011.] —

(1) The city clerk with consent of the council may employ such persons and procure such equipment, supplies, materials, and facilities of every kind he considers necessary to facilitate and assist in his carrying out his functions in connection with administering the election laws.

(2) The necessary expenses incurred in administering the election laws, including reasonable rental for polling places, shall be allowed by the city council and paid out of the city treasury.

(3) The city clerk may administer oaths and affirmations in connection with the performance of his functions in administering the election laws. [I.C., § 50-404, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-404 was repealed. See Prior Laws, § 50-401.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time

former § 50-414 is redesignated as § 50-404..

For former § 50-414, as amended and redesignated as § 50-404, effective January 1, 2011, see the following section, also numbered § 50-404.

50-404. Registration of electors. [Effective January 1, 2011.] — All electors must register before being able to vote at any municipal election. The county clerk shall be the registrar for all city elections and shall conduct voter registration for each city pursuant to the provisions of chapter 4, title 34, Idaho Code. To be eligible to register to vote in city elections, a person shall be at least eighteen (18) years of age, a citizen of the United States and a resident of the city for at least thirty (30) days next preceding the election at which he desires to vote, or a resident of an area annexed by a city pursuant to the provisions of chapter 2, title 50, Idaho Code. [I.C., § 50-414, as added by 1993, ch. 379, § 4, p. 1392; am. and redesign. 2009, ch. 341, § 105, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-414; substituted "chapter 4, title 34, Idaho Code" for "section 34-1402, Idaho Code" at the end of the second sentence; and added the last sentence.

Compiler's Notes. — For § 50-404 as effective until January 1, 2011, see the preceding section, also numbered § 50-404.

50-405. Office of city clerk open as long as polls open. [Effective until January 1, 2011.] — On the day of any general or special election held in the city, the city clerk shall keep his office open for the transaction of business pertaining to the election from the time the polls are opened continuously until the polls are closed. [I.C., § 50-405, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-405 was repealed. See Prior Laws, § 50-401.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time

former § 50-429 is redesignated as § 50-405.

For former § 50-429, as amended and redesignated as § 50-405, effective January 1, 2011, see the following section, also numbered § 50-405.

50-405. General and special city elections. [Effective January 1, 2011.] — (1) A general election shall be held in each city governed by this title, for officials as in this title provided, on the Tuesday following the first Monday of November in each odd-numbered year. All such officials shall be elected and hold their respective offices for the term specified and until their successors are elected and qualified. All other city elections that may be held under authority of general law shall be known as special city elections.

(2) On and after January 1, 2011, notwithstanding any other provisions of law to the contrary, there shall be no more than two (2) elections conducted in any city in any calendar year, except as provided in this section.

(3) The dates on which elections may be conducted are:

(a) The third Tuesday in May of each year; and

(b) The Tuesday following the first Monday in November of each year.

(c) In addition to the elections specified in paragraphs (a) and (b) of this subsection (3), an emergency election may be called upon motion of the city council of a city. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property.

(4) Pursuant to section 34-1401, Idaho Code, all municipal elections shall be conducted by the county clerk of the county wherein the city lies, and elections shall be administered in accordance with the provisions of title 34, Idaho Code, except as those provisions are specifically modified by the provisions of this chapter. After an election has been ordered, all expenses associated with conducting municipal general and special elections shall be paid from the county election fund as provided by section 34-1411, Idaho Code. Expenses associated with conducting runoff elections shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code, or both.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of elections authorized under the provisions of this section. [I.C., § 50-429, as added by 1978, ch. 329, § 2, p. 825; am. 1993, ch. 379, § 2, p. 1392; am. and redesign. 2009, ch. 341, § 107, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-429; substituted "2011" for "1994" and "two (2) elections" for "four (4) elections" in

subsection (2); in subsection (3), deleted former paragraphs (a) and (c) which read "The first Tuesday in February of each year; and" and "The first Tuesday in August of each

year; and", redesignated former paragraphs (b), (d), and (e) as present paragraphs (a), (b), and (c), substituted "third Monday" for "fourth Monday" in present paragraph (a) and deleted the last sentence in paragraph (c), which read "Such a special election, if conducted by the city clerk, shall be conducted at

the expense of the political subdivision submitting the question"; added present subsection (4); and redesignated former subsection (4) as subsection (5).

Compiler's Notes. — For § 50-405 as effective until January 1, 2011, see the preceding section, also numbered § 50-405.

50-406. Appeals by aggrieved persons. [Effective until January 1, 2011.] — (1) Any person adversely affected by any act or failure to act by the city clerk under any election law, or by any order, rule, regulation, directive of [or] instruction made under authority of the city clerk under any election law, may appeal therefrom to the district court for the county in which the act or failure to act occurred or in which the order, rule, regulation, directive or instruction was made or in which such person raises.

(2) Any party to the appeal proceedings in the district court under subsection (1) of this section may appeal from the decision of the district court to the Supreme Court.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against any act or failure to act by the city clerk under any election law or against any order, rule, regulation, directive or instruction made under the authority of the city clerk under any election law. [I.C., § 50-406, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-406 was repealed. See Prior Laws, § 50-401.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time former § 50-430 is redesignated as § 50-406.

For former § 50-430, as amended and re-

designated as § 50-406, effective January 1, 2011, see the following section, also numbered § 50-406.

The bracketed word "or" in subsection (1) was inserted by the compiler, as the probable intended word.

JUDICIAL DECISIONS

Authority of Clerk.

City clerk's authority to review proposed city initiatives was limited to form only, clerk exceeded that authority by rejecting voters'

initiative petition proposing the legalization of marijuana on the basis that it violated state law. *Davidson v. Wright*, 143 Idaho 616, 151 P.3d 812 (2006).

50-406. Method of nomination — Clerk to furnish printed forms. [Effective January 1, 2011.] — Candidates for elective city offices shall be nominated by declaration. The declaration shall contain the name and address of the person and the office and the term for which he is being nominated. There shall be no mention relating to party or principal of the nominee. The completed declaration of candidacy shall be accompanied by: (1) a petition of candidacy signed by not less than five (5) registered qualified electors; or (2) a nonrefundable filing fee of forty dollars (\$40.00) which shall be deposited in the city treasury.

It shall be the duty of the city clerk to furnish upon application a reasonable number of regular printed forms, as herein set forth, to any

person or persons applying therefor. The forms shall be of uniform size as determined by the clerk. [I.C., § 50-430, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 8, p. 164; am. and redesign. 2009, ch. 341, § 108, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-430.

Compiler’s Notes. — For § 50-406 as effective until January 1, 2011, see the preceding section, also numbered § 50-406.

50-407. Establishment of election precincts. [Effective until January 1, 2011.] — The city council shall establish a convenient number of election precincts within their city. Said precincts shall conform as nearly as possible and practicable to the county election precincts within the city. The city council may establish an absentee voting precinct for the city. Voted ballots in the absentee voting precinct shall be retained by the city clerk until election day when they shall be transferred to the ballot processing center and thereafter made a part of the election returns. [I.C., § 50-407, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 3, p. 164.]

STATUTORY NOTES

Prior Laws. — Former § 50-407 was repealed. See Prior Laws, § 50-401.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time

former § 50-431 is redesignated as § 50-407. For former § 50-431, as amended and redesignated as § 50-407, effective January 1, 2011, see the following section, also numbered § 50-407.

50-407. Form of declaration of candidacy. [Effective January 1, 2011.] — Declarations of candidacy and petitions of candidacy shall read substantially as herein set forth. Any number of separate petitions of candidacy may be circulated at the same time for any candidate and all petitions for each candidate shall be considered one (1) petition when filed with the city clerk. Each signer of a petition shall be a registered qualified elector.

DECLARATION OF CANDIDACY

I, the undersigned, affirm that I am a qualified elector of the City of, State of Idaho, and that I have resided in the city for at least thirty (30) days. I hereby declare myself to be a candidate for the office of, for a term of years, to be voted for at the election to be held on the day of,, and certify that I possess the legal qualifications to fill said office, and that my residence address is

(Signed)

Subscribed and sworn to before me this day of,

.....

Notary Public

State of Idaho
County of ss.
City of

PETITION OF CANDIDACY

OF
(NAME OF CANDIDATE)

FOR OFFICE OF

This petition must be filed in the office of the City Clerk not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday immediately preceding election day. The submitted petition must have affixed thereto the names of at least five (5) qualified electors who reside within the appropriate city.

I, the undersigned, being a qualified elector of the City of, in the State of Idaho, do hereby certify and declare that I reside at the place set opposite my name and that I do hereby join in the petition of, a candidate for the office of to be voted at the election to be held on the day of,

Signature of Petitioner	Printed Name	Residence Address	Date Signed
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STATE OF IDAHO

County of

I,, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age; that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence; I believe that each has stated his or her name and residence address correctly; and that each signer is a qualified elector of the State of Idaho, and the City of

Signed
Address
Subscribed and sworn to before me this day of,
Signed Notary Public
Residing at
Commission expires

(Notary Seal)

[I.C., § 50-431, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 32, § 22, p. 46; am. 2002, ch. 75, § 9, p. 164; am. 2006, ch. 105, § 3, p. 288; am. and redesign. 2009, ch. 341, § 109, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-431.

Compiler's Notes. — For § 50-407 as effective until January 1, 2011, see the preceding section, also numbered § 50-407.

50-408. Designation of polling places. [Repealed, effective January 1, 2011.] — The city clerk shall, not less than thirty (30) days before any general or special election, designate a suitable polling place for each election precinct. Polling places shall conform to the standards established by the secretary of state pursuant to the authority granted in section 34-302, Idaho Code. The city clerk shall have the authority to consolidate established precincts within the boundaries of the city. Insofar as possible the polling places shall be in the same location as those provided for county and state elections. If there is no suitable polling place within the precinct, the city clerk may designate a polling place outside the precinct, but as close and convenient as possible for the electors of the precinct. [I.C., § 50-408, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 115, § 3, p. 237; am. 2002, ch. 75, § 4, p. 164.]

STATUTORY NOTES

Prior Laws. — Former § 50-408 was repealed. See Prior Laws, § 50-401.

2009, ch. 341, § 104, this section is repealed effective January 1, 2011.

Compiler's Notes. — Pursuant to S.L.

50-409. Appointment of election judges and clerks. [Repealed, effective January 1, 2011.] — The city clerk in each city shall appoint an election judge and such clerks as may be necessary for each voting precinct within the city. The election officials shall be qualified city or county electors. The city clerk shall notify the election officials of their appointment. If any election judge or clerk fails to report for duty on the day of election the city clerk shall fill such vacancies from among the qualified electors presenting themselves to vote. Compensation for the election judges and clerks shall be not less than the minimum wage as prescribed by laws of the state of Idaho. [I.C., § 50-409, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 1, p. 101; am. 1998, ch. 240, § 1, p. 797; am. 2002, ch. 75, § 5, p. 164.]

STATUTORY NOTES

Cross References. — Minimum wage law, § 44-1501 et seq.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011.

Prior Laws. — Former § 50-409 was repealed. See Prior Laws, § 50-401.

50-410. Challengers — Watchers. [Effective until January 1, 2011.] — The city clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each candidate to be at the polling place for the purpose of challenging voters, and shall if requested, permit one (1) person authorized by a candidate to be present to

observe the conduct of the election. Where the issue before the electors is other than the election of officers, the clerk shall, upon receipt of a written request no later than five (5) days prior to the date of voting on the issue or issues, direct that election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to observe the conduct of the election. Such authorization shall be evidenced in writing, signed by the requesting person, and filed with the city clerk. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. A watcher is entitled to observe any activity conducted at the location at which the watcher is serving; provided however, that the watcher does not interfere with the orderly conduct of the election. Persons permitted to be present to watch the counting of the votes shall not absent themselves until the polls are closed. [I.C., § 50-410, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 12, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 50-410 was repealed. See Prior Laws, § 50-401.

Amendments. — The 2007 amendment, by ch. 202, in the first sentence, deleted “any candidate, or” following the second occurrence of “permit,” and substituted “observe the conduct of the election” for “watch the receiving and counting of the votes”; added the second sentence; in the third sentence, substituted “requesting person” for “candidate”; and added the fifth sentence.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time former § 50-432 is redesignated as § 50-410.

For former § 50-432, as amended and redesignated as § 50-410, effective January 1, 2011, see the following section, also numbered § 50-410.

50-410. Time and manner of filing declarations. [Effective January 1, 2011.] — All declarations of candidacy for elective city offices shall be filed with the clerk of the respective city wherein the elections are to be held, not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday, immediately preceding election day. Before a candidate files a petition of candidacy with the city clerk, the petition signatures shall be verified by the county clerk in the manner described in section 34-1807, Idaho Code, except that the city clerk shall stand in place of the secretary of state. Before any declaration of candidacy and filing fee or petition of candidacy mentioned in section 50-407, Idaho Code, can be filed, the city clerk shall ascertain that it conforms to the provisions of chapter 4, title 50, Idaho Code. The city clerk shall not accept any declarations of candidacy after 5:00 p.m. on the ninth Friday immediately preceding election day. Write-in candidates shall be governed by section 34-702A, Idaho Code, but shall file the declarations required in that section with the city clerk. [I.C., § 50-432, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 6, p. 101; am. 1996, ch. 337, § 1, p. 1137; am. 1998, ch. 240, § 3, p. 797; am. 2002, ch. 75, § 10, p. 164; am. 2006, ch. 105, § 4, p. 288; am. and redesignig. 2009, ch. 341, § 110, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-432 and substituted “section 50-407” for “section 50-431” in the third sentence.

Compiler’s Notes. — For § 50-410 as effective until January 1, 2011, see the preceding section, also numbered § 50-410.

50-411. Electors privileged from arrest during attendance at polling place — Exception. [Effective until January 1, 2011.] — Electors are privileged from arrest, except for treason, a felony or breach of peace, during their attendance at a polling place. [I.C., § 50-411, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-411 was repealed. See Prior Laws, § 50-401.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time

former § 50-435 is redesignated as § 50-411.

For former § 50-435, as amended and redesignated as § 50-411, effective January 1, 2011, see the following section, also numbered § 50-411.

50-411. Notice of candidate filing deadline. [Effective January 1, 2011.] — Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the city clerk shall cause to be published in the official newspaper a notice of the forthcoming candidate filing deadline. The notice shall state the name of the city, the date of the election, the offices up for election, that declarations of candidacy are available from the city clerk, and the deadline for filing such declarations with the city clerk. [I.C., § 50-435, as added by 2006, ch. 105, § 5, p. 288; am. and redesign. 2009, ch. 341, § 111, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-435.

Compiler’s Notes. — For § 50-411 as effective until January 1, 2011, see the preceding section, also numbered § 50-411.

50-412. Disqualified electors not permitted to vote. [Effective until January 1, 2011.] — No elector shall be permitted to vote if he is disqualified as provided in article 6, section 2 and [or] 3 of the Idaho constitution. [I.C., § 50-412, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-412 was repealed. See Prior Laws, § 50-401.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 104, this section is repealed effective January 1, 2011, at which time former § 50-467 is redesignated as § 50-412.

For former § 50-467, as amended and redesignated as § 50-412, effective January 1, 2011, see the following section, also numbered § 50-412.

The bracketed insertion was added by the compiler, as the probable intended word.

50-412. Canvassing votes — Determining results of election. [Effective January 1, 2011.] — The county commissioners, within ten (10) days following any election, shall meet for the purpose of canvassing the

results of the election. Upon acceptance of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of city council proceedings and proclaimed as final. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one (1) office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected. [I.C., § 50-467, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 113, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-467, substituted “The county commissioners, within ten (10) days” for “The mayor and the council, within six (6) days” in the

first sentence, and inserted “city council” near the end of the second sentence.

Compiler’s Notes. — For § 50-412 as effective until January 1, 2011, see the preceding section, also numbered § 50-412.

50-413. Tie votes. [Effective January 1, 2011.] — In case of a tie vote between candidates, the city clerk shall give notice to the interested candidates to appear before the council at a meeting to be called within six (6) days at which time the city clerk shall determine the tie by a toss of a coin. [I.C., § 50-468, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 114, p. 993.]

STATUTORY NOTES

Prior Laws. — Former § 50-413, which comprised I.C., § 50-413, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 81, § 2, p. 148, was repealed by S.L. 2006, ch. 105, § 2.

Another former § 50-413 was repealed in 1978. See Prior Laws, § 50-401.

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-468.

50-414. Registration of electors. [Amended and Redesignated, effective January 1, 2011.] — All electors must register before being able to vote at any municipal election. The county clerk shall be the registrar for all city elections and shall conduct voter registration for each city pursuant to the provisions of section 34-1402, Idaho Code. [I.C., § 50-414, as added by 1993, ch. 379, § 4, p. 1392.]

STATUTORY NOTES

Prior Laws. — Former § 50-414, which comprised I.C., § 50-414, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 61, § 1, p. 121, was repealed by S.L. 1993, ch. 379, § 3, p. 1392, effective January 1, 1994.

Another former § 50-414, which comprised S.L. 1967, ch. 429, § 88, p. 1249, was repealed by S.L. 1978, ch. 329, § 1, p. 825.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 105, section 50-414 is amended and redesignated as section 50-404,

effective January 1 2011, at which time former § 50-469 is redesignated as § 50-414.

For former § 50-469, as amended and redesignated as § 50-414, effective January 1, 2011, see the following section, also numbered § 50-414.

Effective Dates. — Section 6 of S.L. 1993, ch. 379, § 6 provided that the act should be in full force and effect on and after January 1, 1994.

50-414. Failure to qualify creates vacancy. [Effective January 1, 2011.] — If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council. [I.C., § 50-469, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 115, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-469.

Compiler's Notes. — For § 50-414 as effective until January 1, 2011, see the preceding section, also numbered § 50-414.

50-415. Gain or loss of residence by reason of absence from city. [Effective until January 1, 2011.] — For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from this state with the intent to have this state remain his residence. If a person is absent from this city but intends to maintain his residence for voting purposes here, he shall not register to vote in any other city during his absence. [I.C., § 50-415, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Prior Laws. — Former § 50-415 was repealed. See Prior Laws, § 50-401.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 106, this section is repealed effective January 1, 2011, at which time

former § 50-470 is redesignated as § 50-415.

For former § 50-470, as amended and redesignated as § 50-415, effective January 1, 2011, see the following section, also numbered § 50-415.

50-415. Certificates of elections. [Effective January 1, 2011.] — A certificate of election for each elected city official or appointee to fill such position shall be made under the corporate seal by the city clerk, signed by the mayor and clerk, and presented to such officials at the time of subscribing to the oath of office. [I.C., § 50-470, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 116, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-470.

Compiler's Notes. — For § 50-415 as effective until January 1, 2011, see the preceding section, also numbered § 50-415.

50-416. Application for recount of ballots. [Effective January 1, 2011.] — Any candidate desiring a recount of the ballots cast in any general city election may apply to the attorney general therefor, within twenty (20) days of the canvass of such election by the county board of canvassers. The provisions of chapter 23, title 34, Idaho Code, shall govern recounts of elections held under this chapter. [I.C., § 50-471, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 117, p. 993.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which

comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-471 and substituted “county board of canvassers” for “city council” at the end of the first sentence.

50-417. Recall elections. [Effective January 1, 2011.] — Recall elections shall be governed by the provisions of chapter 17, title 34, Idaho Code, except as those provisions may be specifically modified by the provisions of this chapter. [I.C., § 50-472, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 118, p. 993.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-472.

50-418. Initiative and referendum elections. [Effective January 1, 2011.] — Initiative and referendum elections shall be governed by the provisions of chapter 18, title 34, Idaho Code, and chapter 5, title 50, Idaho Code, except as those provisions are specifically modified by this chapter. [I.C., § 50-473, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 119, p. 993.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-473.

50-419. Election law violations. [Effective January 1, 2011.] — The provisions of chapter 23, title 18, Idaho Code, pertaining to crimes and punishments for election law violations are applicable to all municipal elections. [I.C., § 50-475, as added by 1978, ch. 329, § 2, p. 825; am. and redesisg. 2009, ch. 341, § 121, p. 993.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81,

§ 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which

comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

Amendments. — The 2009 amendment,

by ch. 341, redesignated this section from § 50-475 and substituted “applicable to all municipal elections” for “hereby incorporated in this chapter” at the end of the section.

50-420. Application of campaign reporting law to elections in certain cities. [Effective January 1, 2011.] — The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6630, Idaho Code, are hereby made applicable to all elections for mayor, councilman and citywide measures in cities of five thousand (5,000) or more population, except that the city clerk shall stand in place of the secretary of state, and the city attorney shall stand in place of the attorney general. [I.C., § 50-477, as added by 1982, ch. 229, § 1, p. 606; am. 2004, ch. 14, § 1, p. 11; am. 2004, ch. 177, § 1, p. 559; am. 2005, ch. 254, § 5, p. 777; am. 2007, ch. 202, § 16, p. 620; am. and redesign. 2009, ch. 341, § 122, p. 993.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

Amendments. — The 2009 amendment, by ch. 341, redesignated this section from § 50-477.

50-421. Qualifications for registration. [Repealed.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Other former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

50-422. Reregistration of elector who changes residence. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 50-422, as added by 1978,

ch. 329, § 2, p. 825, was repealed by S.L. 1981, ch. 255, § 4.

50-423, 50-424. Registration cards — Registration — When required. [Repealed.]

STATUTORY NOTES

Prior Laws. — Another former § 50-423, which comprised S.L. 1970, ch. 232, § 1, p. 649, was repealed by S.L. 1978, ch. 329, § 1.

Compiler's Notes. — These sections,

which comprised I.C., §§ 50-423, 50-424 as added by 1978, ch. 329, § 2, p. 825; am. 1981, ch. 255, § 5, p. 545; am. 1985, ch. 83, §§ 1, 2, p. 157; am. 1989, ch. 64, § 4, p. 101, were

repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

50-425. Affidavit voting of elector who moves to another precinct. [Repealed.]

STATUTORY NOTES

Prior Laws. — Another former § 50-425, which comprised I.C., § 50-425, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 1981, ch. 255, § 6.

Compiler's Notes. — This section, which comprised I.C., § 50-425, as added by 1989, ch. 64, § 5, p. 101, was repealed by S.L. 1998, ch. 240, § 2, effective July 1, 1998.

50-426. Change of name — Voting. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I. C., § 50-426, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2002, ch. 75, § 1.

50-427. Challenges of entries in combination election record and poll book. [Repealed, effective January 1, 2011.] — At the time of an election, any registered elector may challenge the entry of an elector's name as it appears in the [combination] election record and poll book. Such a challenge will be noted in the remarks column following the elector's name stating the reason, such as "died," "moved," or "incorrect address." The elector making the challenge shall sign his name following the remarks. The city clerk shall notify the county clerk of all challenges to the combination election record and poll book. Corrections to the election record shall be made by the county clerk in the manner provided by section 34-432, Idaho Code. [I.C., § 50-427, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 3, p. 157; am. 2002, ch. 75, § 6, p. 164.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 106, this section is repealed effective January 1, 2011.

The bracketed insertion in the first sentence was added by the compiler to correct the name of the referenced book.

50-428. Combination election record and poll book. [Repealed, effective January 1, 2011.] — The city clerk shall prepare and maintain the combination election record and poll book as provided in section 34-111, Idaho Code. [I.C., § 50-428, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 7, p. 164.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 106, this section is repealed effective January 1, 2011.

50-429. General and special city elections. [Amended and Redesignated, effective January 1, 2011.] — (1) A general election shall be

held in each city governed by this title, for officials as in this title provided, on the Tuesday following the first Monday of November in each odd-numbered year. All such officials shall be elected and hold their respective offices for the term specified and until their successors are elected and qualified. All other city elections that may be held under authority of general law shall be known as special city elections.

(2) On and after January 1, 1994, notwithstanding any other provisions of law to the contrary, there shall be no more than four (4) elections conducted in any city in any calendar year, except as provided in this section.

(3) The dates on which elections may be conducted are:

(a) The first Tuesday in February of each year; and

(b) The fourth Tuesday in May of each year; and

(c) The first Tuesday in August of each year; and

(d) The Tuesday following the first Monday in November of each year.

(e) In addition to the elections specified in subsections (a) through (d) of this section, an emergency election may be called upon motion of the city council of a city. An emergency exists when there is a great public calamity, as an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property. Such a special election, if conducted by the city clerk, shall be conducted at the expense of the political subdivision submitting the question.

(4) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of elections authorized under the provisions of this section. [I.C., § 50-429, as added by 1978, ch. 329, § 2, p. 825; am. 1993, ch. 379, § 2, p. 1392.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-405, effective January 1, 2011.

50-430. Method of nomination — Clerk to furnish printed forms. [Amended and Redesignated, effective January 1, 2011.] — Candidates for elective city offices shall be nominated by declaration. The declaration shall contain the name and address of the person and the office and the term for which he is being nominated. There shall be no mention relating to party or principal of the nominee. The completed declaration of candidacy shall be accompanied by: (1) a petition of candidacy signed by not less than five (5) registered qualified electors; or (2) a nonrefundable filing fee of forty dollars (\$40.00) which shall be deposited in the city treasury.

It shall be the duty of the city clerk to furnish upon application a reasonable number of regular printed forms, as herein set forth, to any person or persons applying therefor. The forms shall be of uniform size as determined by the clerk. [I.C., § 50-430, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 8, p. 164.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-406, effective January 1, 2011, ch. 341, § 108, § 50-430 is amended

50-431. Form of declaration of candidacy. [Amended and Redesignated, effective January 1, 2011.] — Declarations of candidacy and petitions of candidacy shall read substantially as herein set forth. Any number of separate petitions of candidacy may be circulated at the same time for any candidate and all petitions for each candidate shall be considered one (1) petition when filed with the city clerk. Each signer of a petition shall be a registered qualified elector.

DECLARATION OF CANDIDACY

I, the undersigned, affirm that I am a qualified elector of the City of, State of Idaho, and that I have resided in the city for at least thirty (30) days. I hereby declare myself to be a candidate for the office of, for a term of years, to be voted for at the election to be held on the day of,, and certify that I possess the legal qualifications to fill said office, and that my residence address is

(Signed)

Subscribed and sworn to before me this day of,

.....

Notary Public

State of Idaho

County of ss.

City of

PETITION OF CANDIDACY

OF

(NAME OF CANDIDATE)

FOR OFFICE OF

This petition must be filed in the office of the City Clerk not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday immediately preceding election day. The submitted petition must have affixed thereto the names of at least five (5) qualified electors who reside within the appropriate city.

I, the undersigned, being a qualified elector of the City of, in the State of Idaho, do hereby certify and declare that I reside at the place set opposite my name and that I do hereby join in the petition of, a candidate for the office of to be voted at the election to be held on the day of,

Signature of Petitioner	Printed Name	Residence Address	Date Signed
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STATE OF IDAHO
County of

I,, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age; that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence; I believe that each has stated his or her name and residence address correctly; and that each signer is a qualified elector of the State of Idaho, and the City of

..... Signed
..... Address
Subscribed and sworn to before me this day of,
Signed Notary Public
Residing at
Commission expires

(Notary Seal)

[I.C., § 50-431, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 32, § 22, p. 46; am. 2002, ch. 75, § 9, p. 164; am. 2006, ch. 105, § 3, p. 288.]

STATUTORY NOTES

Amendments. — This section was amended by two 2002 acts — ch. 32, § 22 and ch. 75, § 9, both effective July 1, 2002, which appear to be compatible and have been compiled together.
The 2002 amendment, by ch. 32, made stylistic changes.
The 2002 amendment, by ch. 75, rewrote the section.

The 2006 amendment, by ch. 105, in the Petition of Candidacy form, substituted “eleventh Monday” for “eighth Friday” and “ninth Friday” for “sixth Friday” in the first paragraph.
Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 109, § 50-431 is amended and redesignated as § 50-407, effective January 1, 2011.

50-432. Time and manner of filing declarations. [Amended and Redesignated, effective January 1, 2011.] — All declarations of candidacy for elective city offices shall be filed with the clerk of the respective city wherein the elections are to be held, not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday, immediately preceding election day. Before a candidate files a petition of candidacy with the city clerk, the petition signatures shall be verified by the county clerk in the manner described in section 34-1807, Idaho Code, except that the city clerk shall stand in place of the secretary of state. Before any declaration of candidacy and filing fee or petition of candidacy mentioned in section

50-431, Idaho Code, can be filed, the city clerk shall ascertain that it conforms to the provisions of chapter 4, title 50, Idaho Code. The city clerk shall not accept any declarations of candidacy after 5:00 p.m. on the ninth Friday immediately preceding election day. Write-in candidates shall be governed by section 34-702A, Idaho Code, but shall file the declarations required in that section with the city clerk. [I.C., § 50-432, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 6, p. 101; am. 1996, ch. 337, § 1, p. 1137; am. 1998, ch. 240, § 3, p. 797; am. 2002, ch. 75, § 10, p. 164; am. 2006, ch. 105, § 4, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, in the first sentence, substituted “eleventh Monday” for “eighth Friday” and “ninth Friday” for “sixth Friday”; substituted “Before a candidate files a petition of candidacy with the city clerk, the petition signatures” for “Signatures on petitions of candi-

dacy” at the beginning of the second sentence; and substituted “ninth Friday” for “sixth Friday” in the next-to-last sentence.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 110, § 50-432 is amended and redesignated as § 50-410, effective January 1, 2011.

50-433 — 50-434. Signatures on nominating petitions — Revocation of signature. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — These sections, which comprised I.C., § 50-433 and 50-434 as added by 1978, ch. 329, § 2, p. 825, were repealed by S.L. 2002, ch. 75, § 1.

50-435. Notice of candidate filing deadline. [Amended and Redesignated, effective January 1, 2011.] — Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the city clerk shall cause to be published in the official newspaper a notice of the forthcoming candidate filing deadline. The notice shall state the name of the city, the date of the election, the offices up for election, that declarations of candidacy are available from the city clerk, and the deadline for filing such declarations with the city clerk. [I.C., § 50-435, as added by 2006, ch. 105, § 5, p. 288.]

STATUTORY NOTES

Prior Laws. — Former § 50-435, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2002, ch. 75, § 1.

Compiler’s Notes. — Pursuant to S.L.

2009, ch. 341, § 111, § 50-435 is amended and redesignated as § 50-411, effective January 1, 2011.

50-436. Notice of election — Contents — Publication. [Repealed, effective January 1, 2011.] — The city clerk shall give notice for any general or special city election by publishing such notice in at least two (2) issues of the official newspaper of the city. The first publication of notice of election shall be made not less than twelve (12) days prior to the election. The first notice of election shall include the name of the city, the purpose of the election, the date of the election, the polling place in each precinct and

the hours during which the polls shall be open for the purpose of voting. The last publication of notice shall be made not less than five (5) days prior to the election. The second notice of election shall state the name of the city, the date of the election, the purpose of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting. [I.C., § 50-436, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 11, p. 164; am. 2006, ch. 105, § 6, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, substituted “twelve (12) days” for “forty-five (45) days” in the second sentence; in the third sentence, deleted “wherein the election shall be held” following “name of the city”, and inserted “the polling place in each precinct”; deleted the former fourth sentence, which read: “If the election is held for the purpose of electing the mayor and/or members of the city council, the first notice of

election shall state that declarations of candidacy are available from the city clerk, and provide the deadline for filing such declarations with the city clerk”; substituted “five (5) days” for “fifteen (15) days” in the present fourth sentence; and inserted “the name of the city” in the last sentence.

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-437. Official election stamp. [Repealed, effective January 1, 2011.] — The city clerk will provide for an official election stamp which shall have upon the face the date and year of the election in which it is used in the words “Official Election Ballot.” Every ballot used shall be stamped on the outside with the official election stamp before it is given to the voter. In the event the stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write “stamped” upon the ballot in the appropriate place. [I.C., § 50-437, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-438. Ballots and election supplies. [Repealed, effective January 1, 2011.] — The city clerk shall provide and cause to be delivered, at the expense of the city, a suitable number of ballots for each polling place and all supplies necessary to conduct general and special elections for the city. [I.C., § 50-438, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-439. Preparation and contents of ballot. [Repealed, effective January 1, 2011.] — The ballot for each election shall be prepared not less than thirty-five (35) days prior to the date of election by the city clerk. Candidates for mayor will be listed first followed by councilman positions for

four (4) years and then two (2) year councilman positions, provided, that in printing the ballots, the position of the names shall be changed in each office division by placing the top name for that office at the bottom of that division and moving each other name up the column by one (1) position, as many times as there are candidates in the office division in which there are the greatest number of candidates. Candidates' names shall be rotated by precinct for those cities using voting machines or vote tally systems. Nothing shall prevent a voter from writing in the name of any qualified elector of the city for any office to be filled at the said election, but a write-in vote shall not be counted unless the candidate has filed a declaration of intent with the city clerk as required by section 50-432, Idaho Code. The clerk in preparing the ballot shall make provisions for the writing in of names. Separate ballots may be used for bond issues, capital improvement levy, recall, referendum, initiative, advisory ballots or any other measure authorized to be decided by the electorate. [I.C., § 50-439, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 12, p. 164; am. 2006, ch. 105, § 7, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, substituted “thirty-five (35) days” for “twenty-one (21) days” in the first sentence; and substituted “election, but a write-in vote shall not be counted unless the candidate has filed a declaration of intent

with the city clerk as required by section 50-432, Idaho Code” for “election, and” at the end of the third sentence.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-440. Sample ballots. [Repealed, effective January 1, 2011.] — The city clerk shall cause to be printed not less than twenty-nine (29) days before the election, sample ballots containing the candidates for each office, and all measures to be submitted, which sample ballots shall be in the same form as the official ballots to be used, except they shall have printed thereon the words “sample ballot,” and shall be on paper of a different color than the official ballot, and the clerk shall furnish copies of the same on application at his office, to anyone applying therefor. Said sample ballot shall be published at least twice in the official newspaper of the city, the first publication not less than twelve (12) days prior to the election and the second publication not less than five (5) days prior to the election. [I.C., § 50-440, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 13, p. 164; am. 2006, ch. 105, § 8, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, substituted “twenty-nine (29) days” for “fifteen (15) days” in the first sentence and substituted “the first publication not less than twelve (12) days prior to the election and the second publication not less

than five (5) days prior to” for “the last time to be within seven (7) days of” near the end of the last sentence.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-441. Procedure for correction of ballots after printing. [Repealed, effective January 1, 2011.] — When any candidate withdraws

after the printing of the ballots the city clerk will if time permits, cross the name off the ballot, otherwise the elections clerk responsible for distributing the ballots shall cross the name of such candidate off the ballot, and no votes shall be cast for the candidates [candidate]. [I.C., § 50-441, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

The bracketed word “candidate” was inserted by the compiler, as the probable intended word.

50-442. Voting by absentee ballot authorized. [Repealed, effective January 1, 2011.] — Any registered elector in a city may vote at any city election by absentee ballot as herein provided. [I.C., § 50-442, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-443. Application for absentee ballot. [Repealed, effective January 1, 2011.] — Any registered elector may make written application to the city clerk for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address and address to which such ballot shall be forwarded. The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the city clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 50-448, Idaho Code, shall be received by the city clerk not later than 5:00 p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the city clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person in the United States service may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as “Federal Voting Assistance Act of 1955.” The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot. [I.C., § 50-443, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 4, p. 157; am. 1996, ch. 74, § 2, p. 238; am. 2002, ch. 236, § 3, p. 707.]

STATUTORY NOTES

Federal References. — The Federal Voting Assistance Act of 1955, referred to in the second paragraph of this section, was compiled as 42 U.S.C. §§ 1973cc — 1973cc-2, 1973cc11 — 1973cc-15, 1973cc21 — 1973cc-26, which were repealed by Act Aug. 28, 1986, P.L. 99-410, Title II, § 203, 100 Stat. 930. See now 42 USCS § 1973ff.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

Effective Dates. — Section 4 of S.L. 2002, ch. 236 declared an emergency. Approved March 22, 2002.

50-444. Classifications for absent elector's ballot. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 50-444, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 5, p.

157, was repealed by S.L. 1998, ch. 240, § 4, effective July 1, 1998.

50-445. Issuance of absentee ballot. [Repealed, effective January 1, 2011.] — Upon receipt of an application for an absent elector's ballot within the proper time, the city clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested, and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot. The absentee ballot may be delivered to the absent elector in the office of the city clerk, by postage prepaid mail or by other appropriate means.

An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. No city clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner. [I.C., § 50-445, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 6, p. 157; am. 1996, ch. 74, § 3, p. 238; am. 1998, ch. 240, § 5, p. 797.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

Effective Dates. — Section 4 of S.L. 1996, ch. 74 declared an emergency. Approved March 6, 1996.

50-446. Marking and folding of absentee ballot — Affidavit. [Repealed, effective January 1, 2011.] — Upon receipt of the absent elector's ballot the elector shall thereupon mark and fold the ballot so as to conceal the marking, deposit it in the ballot envelope and seal the envelope securely. The ballot envelopes must be deposited in the return envelope and sealed securely.

The elector shall then execute an affidavit on the back of the return envelope in the form prescribed, provided however, that such affidavit need not be notarized. [I.C., § 50-446, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-447. Return of absentee ballot. [Repealed, effective January 1, 2011.] — The return envelope shall be mailed or delivered to the officer who issued the same; provided, that an absentee ballot must be received by the issuing officer by 8:00 p.m. on the day of election before such ballot may be counted.

Upon receipt of an absent elector's ballot the city clerk of the city wherein such elector resides shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office, comparing the signature upon the return envelope with the elector's registration card to ensure that signatures correspond. He shall safely keep and preserve all absent elector's ballots unopened until the time prescribed for delivery to the judges in accordance with this chapter. [I.C., § 50-447, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 7, p. 157; am. 2007, ch. 202, § 13, p. 620.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 202, in the first sentence in the last paragraph, deleted "and, if the ballot was delivered in person, the name and address of

the person delivering the same" from the end.

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-448. City clerks shall provide an absent elector's voting place. [Repealed, effective January 1, 2011.] — Each city clerk shall provide an "absent elector's polling place." It shall be provided with voting booths and other necessary supplies as provided by law. [I.C., § 50-448, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-449. Transmission of absentee ballots to polls. [Repealed, effective January 1, 2011.] — On receipt of such absent elector's ballot or ballots, the city clerk shall forthwith enclose the same unopened in a carrier envelope endorsed with the name and official title of such officer and the words: "absent elector's ballots to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots.

In those cities which count ballots at a central location, absentee ballots that are received may, in the discretion of the city clerk, be retained in a secure place in the clerk's office and such ballots shall be added to the precinct returns at the time of ballot tabulation. The clerk shall deliver a list

of those absentee ballots received to the polls to record in the official poll book that the elector has voted. [I.C., § 50-449, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 14, p. 620.]

STATUTORY NOTES

Amendments. — The 2007 amendment, 2009, ch. 341, § 112, this section is repealed by ch. 202, added the last paragraph. effective January 1, 2011.

Compiler's Notes. — Pursuant to S.L.

50-450. Deposit of absentee ballots. [Repealed, effective January 1, 2011.] — Between the opening and closing of the polls on election day the judges of election of such precinct shall open the carrier envelope only, announce the absent elector's name, check the [combination] election record and poll book to ascertain if the applicant is a duly registered elector of the precinct and that he has not heretofore voted at the election, they shall open the return envelope and remove the ballot envelopes and deposit the same in the proper ballot boxes and cause the absent elector's name to be entered on the poll books the same as though he had been present and voted in person. The ballot envelope shall not be opened until the ballots are counted. [I.C., § 50-450, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 8, p. 157.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011. The bracketed insertion was added by the compiler.

50-451. Record of applications for absentee ballots. [Repealed, effective January 1, 2011.] — The city clerk shall keep a record in his office containing a list of names and precinct numbers of electors making applications for absent elector's [electors'] ballots, together with the date on which such application was made, and the date on which such absent elector's ballot was returned. If an absentee ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record. Such record shall be open to public inspection under proper regulations. [I.C., § 50-451, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011. The bracketed word "electors'" in the first sentence was inserted by the compiler, as the probable intended word.

50-452. Duties of city clerk on election day. [Repealed, effective January 1, 2011.] — (1) The city clerk shall administer an oath of office to the election judge of each precinct before or upon delivery of the ballots and election supplies. The oath subscribed to by the election judge appears in the combination election record and poll book.

(2) Before the polls open the election judge will administer an oath of office to all election board officials who will subscribe to said oath in the combination election record and poll book. The city clerk may administer the oath of office to the election judge and election board officials at one time.

(3) The combination election record and poll book shall be ruled in a proper manner so that in a column for ballot numbers sufficient space shall appear for inserting the numbers of several ballots. At any election when more than one (1) ballot is used, a separate column shall be provided for each separate form of ballot used.

(4) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges. [I.C., § 50-452, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-453. Opening and closing polls. [Repealed, effective January 1, 2011.] — (1) As provided by ordinance at all general and special city elections the polls shall be opened at either 8:00 a.m. or 12:00 noon and remain open until 8:00 p.m. of the same day.

(2) Upon opening the polls the precinct judge will make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 p.m. shall be allowed to vote, notwithstanding the pronouncement that the polls are closed. [I.C., § 50-453, as added by 1978, ch. 329, § 2, p. 825; am. 1987, ch. 2, § 1, p. 3; am. 1993, ch. 379, § 5, p. 1392; am. 1996, ch. 76, § 1, p. 242; am. 1998, ch. 240, § 6, p. 797.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

Effective Dates. — Section 6 of S.L. 1993, ch. 379 provided that the act shall be in full force and effect on January 1, 1994.

50-454. Changing polling place — Proclamation and notice. [Repealed, effective January 1, 2011.] — Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the election judge, after assembling and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election and the city clerk shall be notified of the change.

Upon adjourning any election, the judge shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made for notifying electors of the change of polling place. [I.C., § 50-454, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-455. Opening ballot boxes. [Repealed, effective January 1, 2011.] — In the presence of bystanders the election judge shall break the sealed packages of election ballots, official stamp and other supplies.

Before receiving any ballots the judge shall open and exhibit, close and lock the ballot boxes, and thereafter they shall not be removed from the polling place until all ballots are counted. They shall not be opened until the polls are closed unless the precinct is using a duplicate set of ballot boxes. [I.C., § 50-455, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-456. Judges may administer oaths — Challenge of voters. [Repealed, effective January 1, 2011.] — The election judge may administer and certify any oath required to be administered during the progress of an election or challenge any elector. [I.C., § 50-456, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-457. Enforcement duties of judge. [Repealed, effective January 1, 2011.] — The judge of any election shall have the power to make arrests for disturbance of the peace, as provided by law for constables, and he shall allow no one within the voting area except those who go to vote, and shall allow but one (1) elector in a compartment at one (1) time. He shall remain and keep order at the polling place until all of the votes are tallied. [I.C., § 50-457, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 9, p. 157.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-458. Signing combination election record and poll book — Delivery of ballot to elector. [Repealed, effective January 1, 2011.] — (1) An elector desiring to vote shall state his name and address to the clerk in charge of the combination election record and poll book.

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.

(3) No person shall knowingly sign his name in the combination election record and poll book if his residence address is not within that precinct at the time of signing.

(4) If the residence address of a person contained in the combination election record and poll book is incorrectly given due to an error in preparation of the combination election record and poll book, the judge shall ascertain the correct address and make the necessary correction.

(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. [I.C., § 50-458, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 14, p. 164.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-459. Manner of voting. [Repealed, effective January 1, 2011.]

— On receipt of his ballot, the elector shall retire to a vacant voting booth and mark his ballot according to the instructions provided by law.

After marking his ballot, the elector shall present himself to the receiving clerk, state his name and residence, and deposit his ballot in the proper box or hand his ballot to the receiving clerk, who shall deposit it. The clerk shall then proclaim in an audible voice that the elector has voted. The election officials shall then record that the elector has voted. [I.C., § 50-459, as added by 2006, ch. 105, § 10, p. 288; am. 2007, ch. 202, § 15, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 50-459, which comprised I.C., § 50-459, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2006, ch. 105, § 10.

Amendments. — The 2007 amendment, by ch. 202, deleted the last sentence in the first paragraph, which read: "Before leaving the voting compartment the elector shall fold his ballot so that the official stamp is visible and the face of the ballot is completely enclosed"; and in the last paragraph, in the first

sentence, inserted "deposit his ballot in the proper box or" and "who shall deposit it," and in the next-to-last sentence, substituted "The clerk shall then proclaim" for "The clerk shall deposit the ballot in the proper box after ascertaining that the ballot is folded correctly, and shall proclaim."

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-460. Assistance to voter. [Repealed, effective January 1, 2011.]

— If any registered elector, who is unable by reason of physical disability or other handicap to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be assisted by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present the ballot to the judge of election in the manner provided above. If any

registered elector is unable, due to physical disability or other handicap, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot. [I.C., § 50-460, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 10, p. 157.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-461. Spoiled ballots. [Repealed, effective January 1, 2011.] — No person shall take or remove any ballot from the polling place. If an elector inadvertently or by mistake spoils a ballot, he shall return it folded to the distributing election clerk, who shall give him another ballot. The ballot thus returned shall, without examination, be immediately canceled by writing across the back, or outside of the ballot as folded, the words "spoiled ballot, another issued," and (deposit) the spoiled ballot [shall be deposited] in [the] box provided for that purpose. [I.C., § 50-461, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

In the last sentence the word "deposit" was

placed in parentheses as surplusage and the bracketed words "shall be deposited" and "the" were inserted by the compiler, as the probable intended words.

50-462. Officers not to divulge information. [Repealed, effective January 1, 2011.] — No judge or election clerk shall communicate to anyone any information as to the name or number on the registry list of any elector who has not applied for a ballot, or who has not voted at the polling place; and no judge, clerk or other person whomsoever [whosoever], shall interfere with, or attempt to interfere with, a voter when marking a ballot. No judge, clerk or other person shall, directly or indirectly, attempt to induce any voter to display his ballot after he shall have marked same, or to make known to any person the name of any candidate for or against whom he may have voted. [I.C., § 50-462, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

The bracketed word "whosoever" in the first sentence was inserted by the compiler, as the probable intended word.

50-463. Counting of votes. [Repealed, effective January 1, 2011.] — (1) When the polls are closed the election personnel must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed at which time all election personnel may assist in completing the counting of the ballots. [I.C., § 50-463, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 11, p. 157; am. 1989, ch. 64, § 7, p. 101.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-464. Comparison of poll lists and ballots — Void ballots. [Repealed, effective January 1, 2011.] — The ballot box shall be opened and the ballots found therein counted by the judges, unopened and the number of ballots in the box must agree with the number marked in the poll book or election register as having received a ballot, and this number, together with the number of spoiled ballots, must agree with the number of stubs in the books from which the ballots have been taken. If the number of ballots issued does not agree with the number of stubs the election judges shall have authority to make any decision to correct the situation; but this shall not be construed to allow the judges to void all ballots cast at that polling place.

When duplicate ballot boxes are used in a precinct, the duties herein prescribed shall be done after all of the votes have been tallied.

At any bond election conducted by a city any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. It is hereby declared that any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and such ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such bond election. [I.C., § 50-464, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 12, p. 157.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

1985, ch. 83 declared an emergency and provided that the act should be in full force and effect on and after April 1, 1985. Approved March 12, 1985.

Effective Dates. — Section 13 of S.L.

50-465. Counting of ballots. [Repealed, effective January 1, 2011.] — The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate shall be entered in the tally books together with the total. Any ballot or part of a ballot from which it is impossible to determine the

elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Following the counting, the election officials must post a correct copy of such results at the polling place and transmit a copy to the city clerk.

In no event shall the results of such count be released to the public until after 8 p.m. of election day. [I.C., § 50-465, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-466. Transmission of supplies to city clerk. [Repealed, effective January 1, 2011.] — After the counting of the votes, the judges of the election shall enclose and seal the combination election record and poll book, tally books, all ballot stubs, unused ballot books, and other supplies in a suitable container and deliver them to the city clerk's office. If the office of the city clerk is closed, the articles shall be delivered to the police department who shall deliver them to the city clerk no later than the day after the election. [I.C., § 50-466, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 112, this section is repealed effective January 1, 2011.

50-467. Canvassing votes — Determining results of election. [Amended and Redesignated, effective January 1, 2011.] — The mayor and the council, within six (6) days following any election, shall meet for the purpose of canvassing the results of the election. Upon acceptance of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of proceedings and proclaimed as final. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected. [I.C., § 50-467, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 113, § 50-467 is amended and redesignated as § 50-412, effective January 1, 2011.

50-468. Tie votes. [Amended and Redesignated, effective January 1, 2011.] — In case of a tie vote between candidates, the city clerk shall give notice to the interested candidates to appear before the council at a

meeting to be called within six (6) days at which time the city clerk shall determine the tie by a toss of a coin. [I.C., § 50-468, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-413, effective January 2009, ch. 341, § 114, § 50-468 is amended January 1, 2011.

50-469. Failure to qualify creates vacancy. [Amended and Redesignated, effective January 1, 2011.] — If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council. [I.C., § 50-469, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-414, effective January 2009, ch. 341, § 115, § 50-469 is amended January 1, 2011.

50-470. Certificates of elections. [Amended and Redesignated, effective January 1, 2011.] — A certificate of election for each elected city official or appointee to fill such position shall be made under the corporate seal by the city clerk, signed by the mayor and clerk, and presented to such officials at the time of subscribing to the oath of office. [I.C., § 50-470, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-415, effective January 2009, ch. 341, § 116, § 50-470 is amended January 1, 2011.

50-471. Application for recount of ballots. [Amended and Redesignated, effective January 1, 2011.] — Any candidate desiring a recount of the ballots cast in any general city election may apply to the attorney general therefor, within twenty (20) days of the canvass of such election by the city council. The provisions of chapter 23, title 34, Idaho Code, shall govern recounts of elections held under this chapter. [I.C., § 50-471, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. and redesignated as § 50-416, effective January 2009, ch. 341, § 117, § 50-471 is amended January 1, 2011.

50-472. Recall elections. [Amended and Redesignated, effective January 1, 2011.] — Recall elections shall be governed by the provisions of chapter 17, title 34, Idaho Code, except as those provisions may be specifically modified by the provisions of this chapter. [I.C., § 50-472, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 118, § 50-472 is amended and redesignated as § 50-417, effective January 1, 2011.

50-473. Initiative and referendum elections. [Amended and Redesignated, effective January 1, 2011.] — Initiative and referendum elections shall be governed by the provisions of chapter 18, title 34, Idaho Code, and chapter 5, title 50, Idaho Code, except as those provisions are specifically modified by this chapter. [I.C., § 50-473, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 119, § 50-473 is amended and redesignated as § 50-418, effective January 1, 2011.

50-474. Voting by machine or vote tally system. [Repealed, effective January 1, 2011.] — Any city may use voting machines or vote tally system in conduct of elections. A city voting by machine shall be governed by the provisions of chapter 24, title 34, Idaho Code. [I.C., § 50-474, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 120, this section is repealed effective January 1, 2011.

50-475. Election law violations. [Amended and Redesignated, effective January 1, 2011.] — The provisions of chapter 23, title 18, Idaho Code, pertaining to crimes and punishments for election law violations are hereby incorporated in this chapter. [I.C., § 50-475, as added by 1978, ch. 329, § 2, p. 825.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2009, ch. 341, § 121, § 50-475 is amended and redesignated as § 50-419, effective January 1, 2011.

50-476. Adoption of state registration procedures — Joint registration. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 50-476 as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

50-477. Application of campaign reporting law to elections in certain cities. [Amended and Redesignated, effective January 1, 2011.] — The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6630, Idaho Code, are hereby made applicable to all elections for

mayor, councilman and citywide measures in cities of five thousand (5,000) or more population, except that the city clerk shall stand in place of the secretary of state, and the city attorney shall stand in place of the attorney general. [I.C., § 50-477, as added by 1982, ch. 229, § 1, p. 606; am. 2004, ch. 14, § 1, p. 11; am. 2004, ch. 177, § 1, p. 559; am. 2005, ch. 254, § 5, p. 777; am. 2007, ch. 202, § 16, p. 620.]

STATUTORY NOTES

Amendments. — This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 14, substituted “five thousand (5,000)” for “sixteen thousand (16,000)”.

The 2004 amendment, by ch. 177, substituted “to elections in certain cities” for “to certain city elections” in the section heading, inserted “and citywide measures” near the middle of the section, made the same change as S.L. 2004, ch. 14, and added “and the city

attorney shall stand in place of the attorney general” at the end.

The 2007 amendment, by ch. 202, deleted “expenditures” following “campaign” in the section catchline; and deleted “insofar as they relate to the reporting of campaign contributions” following “67-6630, Idaho Code.”

Compiler’s Notes. — Pursuant to S.L. 2009, ch. 341, § 122, § 50-477 is amended and redesignated as § 50-420, effective January 1, 2011.

50-478. Limitation of ballot access for multi-term incumbents. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised Init. Measure 1994, No. 2, § 3, p. 1371, was repealed by S.L. 2002, ch. 1, § 1.

50-479. Application of persuasive poll requirements. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 50-479, as added by 2002, ch. 142, § 1, p. 393, was repealed by S.L. 2006, ch. 105, § 11.

CHAPTER 5

INITIATIVE — REFERENDUM — RECALL

SECTION.

50-501. Initiative and referendum.

50-502 — 50-517. [Repealed.]

50-501. Initiative and referendum. — The city council of each city shall provide by ordinance for direct legislation by the people through the initiative and referendum. Minimum requirements of the ordinance adopted shall be as follows: (1) petitioners for initiative or referendum shall be equal to twenty percent (20%) of the total number of electors who cast votes at the last general election in the city; (2) petitions for referendum shall be filed not less than sixty (60) days following the final adoption of the ordinance to be subject to referendum; (3) a special election for initiative or referendum shall be provided as prescribed in section 34-106, Idaho Code; (4) require-

ments for signature, verification of valid petitions, printing of petition, and time limits, except as expressly modified herein, shall be as nearly as practicable as provided in sections 34-1701 through 34-1705, Idaho Code. This section does not apply to bond elections. [I.C., § 50-501, as added by 1977, ch. 144, § 2, p. 320; am. 1978, ch. 343, § 1, p. 882; am. 1993, ch. 313, § 14, p. 1157; am. 1997, ch. 352, § 1, p. 1041.]

STATUTORY NOTES

Cross References. — Initiative and referendum elections, § 34-1801 et seq.

Prior Laws. — Former § 50-501, which comprised 1967, ch. 429, § 27A, p. 1249; am. 1973, ch. 80, § 1, p. 129, was repealed by S.L. 1977, ch. 144, § 1.

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Effective Dates. — Section 2 of S.L. 1978, ch. 343 declared an emergency. Approved March 29, 1978.

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

JUDICIAL DECISIONS

Initiative Power.

Pursuant to Idaho Const. Art. III, § 1 and § 50-501, coalition's petition for an initiative election demanding enactment of an ordinance for a Ten Commandments display to be placed in a park qualified for the ballot for consideration by the voters; the supreme

court could not interrupt the consideration of a properly qualified initiative. *City of Boise v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Court remedies against council.
Necessity for authorizing ordinance.
Tax and appropriation ordinances.

Court Remedies Against Council.

Council could have been compelled in a proper case by mandamus to hold a referendum election and could have been restrained by writ of prohibition from holding an unauthorized election. *Perrault v. Robinson*, 29 Idaho 267, 158 P. 1074 (1916).

Necessity for Authorizing Ordinance.

Boise City not having passed an initiative and referendum ordinance as provided by provisions of the former law governing refer-

endums, no such right of direct legislation by the people existed, the provisions for the same under the Boise City charter being no longer in force. *Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967).

Tax and Appropriation Ordinances.

It was not intention of legislature that ordinances making annual tax levy and appropriations should have been submitted to a referendum vote. *Swain v. Fritchman*, 21 Idaho 783, 125 P. 319 (1912).

50-502 — 50-517. Recall of officers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections which comprised S.L. 1967, ch. 429, §§ 105-117, were repealed by S.L. 1972, ch. 283, § 2,

p. 703. For law relating to recall of officers see § 34-1701 et seq.

CHAPTER 6

MAYOR

SECTION.

- 50-601. Qualifications.
- 50-602. Mayor, administrative official.
- 50-603. Messages to council.
- 50-604. Special meetings of council.
- 50-605. Accounts and reports of officers.
- 50-606. Police powers of mayor.
- 50-607. General powers.
- 50-608. Vacancy in office of mayor.
- 50-609. Mayor may require aid in enforcing law.

SECTION.

- 50-610. [Repealed.]
- 50-611. Veto power.
- 50-612. Majority required for election —
Runoff election. [Effective until January 1, 2011.]
- 50-612. Majority required for election —
Runoff election. [Effective January 1, 2011.]

50-601. Qualifications. — Any person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office.

The term of office of mayor shall be for a period of four (4) years except as otherwise specifically provided. He shall take office at the time and in the manner provided for installation of councilmen. [1967, ch. 429, § 121, p. 1249; am. 2002, ch. 75, § 15, p. 164.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-602. Mayor, administrative official. — The mayor, except as provided in sections 50-801 through 50-812[, Idaho Code], shall be the chief administrative official of the city, preside over the meetings of the city council and determine the order of business subject to such rules as the council may prescribe, have a vote only when the council is equally divided, have the superintending control of all the officers and affairs of the city, preserve order, and take care that the ordinances of the city and provisions of this act are complied with and enforced. [1967, ch. 429, § 122, p. 1249.]

STATUTORY NOTES

Cross References. — Mayor may solemnize marriages, § 32-303.

For meaning of 'this act', see Compiler's Notes, § 50-102.

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

Cited in: Buckalew v. City of Grangeville, 100 Idaho 460, 600 P.2d 136 (1979).

50-603. Messages to council. — The mayor shall, from time to time, communicate to the city council such information and recommend such

measures as, in his opinion, may tend to the improvement of the finances, the protection, the health, the security, the ornament, the comfort, and the general welfare and prosperity of the city. [1967, ch. 429, § 123, p. 1249.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Appointment of Special Police.

Former similar section authorized the mayor to recommend the appointment of spe-

cial police, but he had no authority himself to appoint them. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

50-604. Special meetings of council. — The mayor shall have the power to call special meetings of the city council, the object of which shall be submitted to the council in writing; the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk. [1967, ch. 429, § 124, p. 1249.]

50-605. Accounts and reports of officers. — The mayor shall have the power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make written reports pertaining to his office to the council. [1967, ch. 429, § 125, p. 1249.]

50-606. Police powers of mayor. — The mayor shall have such jurisdiction as may be vested in him by ordinance over all places within five (5) miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, except taxation, within one (1) mile of the corporate limits of said city and over such properties as may be owned by the city without the corporate limits. [1967, ch. 429, § 126, p. 1249.]

50-607. General powers. — The mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him by the city council, and shall have the power to administer oaths, and shall sign all contracts and conveyances in the name of and on behalf of the city. [1967, ch. 429, § 127, p. 1249.]

JUDICIAL DECISIONS

Mandamus.

Mandamus will lie if the officer against whom the writ is brought has a clear legal duty to perform the desired act, and if the act sought to be compelled is ministerial or executive in nature; thus, mandamus was a

proper remedy to compel the mayor of a city to execute a public contract, since the signing of public contracts is authorized by this section. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

DECISIONS UNDER PRIOR LAW

Appointment of Policemen.

Under former similar section, mayor had no authority to appoint policemen upon his own motion or in a manner other than that pro-

vided in former section governing appointment of officers. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

50-608. Vacancy in office of mayor. — In case of a temporary vacancy in the office of mayor due to absence or disability, the president of the council shall exercise the office of mayor during such disability or temporary absence, and until the mayor shall return. When a vacancy occurs in the office of mayor by reason of death, resignation or permanent disability, the city council shall fill the vacancy from within or without the council as may be deemed in the best interests of the city, which appointee shall serve until the next general city election, at which election a mayor shall be elected for the full four (4) year term. [1967, ch. 429, § 128, p. 1249.]

50-609. Mayor may require aid in enforcing law. — The mayor is hereby authorized to call on every resident in the city over twenty-one (21) years of age to aid in enforcing the laws. [1967, ch. 429, § 129, p. 1249; am. 2006, ch. 53, § 1, p. 164.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 53, substituted “resident” for “male inhabitant.”

50-610. Remission of fines. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised S.L. 1967, ch. 429, § 130, p. 1249, was repealed by S.L. 1970, ch. 63, § 1, p. 152, effective at 12:01 a.m. on January 11, 1971.

50-611. Veto power. — The mayor shall have power to veto or sign any ordinance passed by the city council; provided, that any ordinance vetoed by the mayor may be passed over his veto by a vote of one-half (1/2) plus one (1) of the members of the full council, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become law without his signature. [1967, ch. 429, § 131, p. 1249.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Right to Legislate.

Former similar section expressly conferred upon city council right to legislate on behalf of city. Such power was nowhere vested in

mayor except by virtue of his veto power. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

50-612. Majority required for election — Runoff election. [Effective until January 1, 2011.] — A city may, by ordinance, provide that a majority of the votes for any candidate running for the office of mayor shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff

election shall be conducted as in the general election in a manner and at such time, within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-429, Idaho Code. The ballot shall be prepared by the city clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the city clerk not less than twenty (20) days preceding any runoff election and sample ballots shall be printed not less than eighteen (18) days preceding the runoff election. [I.C., § 50-612, as added by 1985, ch. 209, § 1, p. 518; am. 1992, ch. 176, § 5, p. 553; am. 2002, ch. 75, § 16, p. 164; am. 2006, ch. 105, § 12, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, substituted the present last two sentences for the former last sentence which read: “The first notice of election shall be made by the city clerk not less than twenty (20) days next preceding any runoff election, and the designation of polling places shall be made by the city clerk not less than twenty (20) days next preceding any runoff election”.

Compiler’s Notes. — For this section as

effective January 1, 2011, see the following section, also numbered § 50-612.

Effective Dates. — Section 2 of S.L. 1985, ch. 209 declared an emergency. Approved March 21, 1985.

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

50-612. Majority required for election — Runoff election. [Effective January 1, 2011.] — A city may, by ordinance, provide that a majority of the votes for any candidate running for the office of mayor shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff election shall be conducted by the county clerk as in the general election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time, within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-405, Idaho Code. The ballot shall be prepared by the county clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the county commissioners not less than twenty (20) days preceding any runoff election and sample ballots shall be printed not less than eighteen (18) days preceding the runoff election. [I.C., § 50-612, as added by 1985, ch. 209, § 1, p. 518; am. 1992, ch. 176, § 5, p. 553; am. 2002, ch. 75, § 16, p. 164; am. 2006, ch. 105, § 12, p. 288; am. 2009, ch. 341, § 123, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the third sentence, inserted “by the county clerk” and “consistent with chapter 14, title 34, Idaho Code,” and updated the last section reference; in the fourth sentence, substituted “county clerk” for “city clerk”; and, in the last sentence, substituted “county commissioners” for “city clerk.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-612.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 7

COUNCIL

SECTION.

- 50-701. Composition — Powers.
 50-702. Qualification of councilmen — Terms
 — Installation.
 50-703. Change in number of councilmen.
 50-704. Vacancies — Appointment.
 50-705. Meetings of council — Quorum —
 Discipline.
 50-706. Special meetings of council.
 50-707. Assignment of council seats.

SECTION.

- 50-707A. Election of councilmen by districts.
 50-707B. Majority may be required for elec-
 tion — Runoff election. [Effective
 until January 1, 2011.]
 50-707B. Majority may be required for elec-
 tion — Runoff election. [Effective
 January 1, 2011.]
 50-708. Examination of accounts of fiscal of-
 ficers.

50-701. Composition — Powers. — The legislative authority of each city in the state of Idaho, except those operating under the provisions of section [sections] 50-801 through 50-812[, Idaho Code,] shall be vested in a council consisting of either four (4) or six (6) members, one half (1/2) of whom shall be elected at each general city election. Councils shall have such powers and duties as are now or may hereafter be provided under the general laws of the state of Idaho. [1967, ch. 429, § 132, p. 1249.]

STATUTORY NOTES

Cross References. — Annual appropriations, § 50-1003.

Annual audit of city finances, § 50-1010.

Annual budget, § 50-1002.

Certification of taxes to be collected by tax collector, § 50-1007.

No power to draw on funds without appropriation, § 50-1006.

Prior Laws. — Section 472 of S.L. 1967,

ch. 429 repealed former chs. 1-46, inclusive, and chs. 48, 49, of tit. 50.

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

Cited in: Federated Publications, Inc. v. Boise City, 128 Idaho 459, 915 P.2d 21 (1996).

50-702. Qualification of councilmen — Terms — Installation. — Any person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho. Each councilman elected at a general city election, except as otherwise specifically provided, shall hold office for a term of four (4) years, and until his successor is elected and qualified. Councilmen elected at each general city election shall be installed at the first meeting in January following election. The manner of conducting that meeting shall be as herein set forth and not otherwise: the incumbents shall meet and conduct such business as may be necessary to conclude the fiscal matters of the preceding year; the newly elected shall then subscribe to the oath of office, be presented certificates of election, assume the duties of their position, and conduct such business as may be necessary, one (1)

item of which shall be the election of a member as president of the council. [1967, ch. 429, § 133, p. 1249; am. 2002, ch. 75, § 17, p. 164.]

50-703. Change in number of councilmen. — A. Any city may change to the greater or lesser number of councilmen after an election instituted by resolution of the council or by petition as provided for initiative in sections 50-502 through 50-517, Idaho Code, such election to be held not less than sixty (60) days before any general city election. When the proposition submitted to the electors shall receive a favorable vote, officials shall be elected at the succeeding general city election, provided however, that should such election be conducted in a year when no general city election is to be held, such new positions shall be filled by appointment within thirty (30) days.

(a) When the number of councilmen to be elected is to be reduced from six (6) to four (4), there shall be elected one (1) councilman, to serve a term of four (4) years. At the next succeeding general city election, there shall be elected two (2) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

(b) When the number of councilmen to be elected is to be increased from four (4) to six (6), there shall be elected three (3) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

B. Any city operating under the city manager form of government may change to the greater or lesser number of councilmen after an election instituted under subsection (A).

(a) When the number of councilmen to be elected is to be reduced from seven (7) to five (5);

1. If there are four (4) councilmen up for election at the next general city election, there shall be elected two (2) councilmen, each to serve a term of four (4) years.

2. If there are three (3) councilmen up for election at the next general city election, there shall be elected one (1) councilman, to serve a term of four (4) years. At the next succeeding general city election, there shall be elected three (3) councilmen, each to serve a term of four (4) years and one (1) councilman, to serve a term of two (2) years.

(b) When the number of councilmen to be elected is to be increased from five (5) to seven (7);

1. If there are two (2) councilmen up for election at the next general city election, there shall be elected four (4) councilmen, each to serve a term of four (4) years.

2. If there are three (3) councilmen up for election at the next general city election, there shall be elected four (4) councilmen, each to serve a term of four (4) years and one (1) councilman to serve a term of two (2) years. [1967, ch. 429, § 134, p. 1249; am. 1972, ch. 16, § 1, p. 21.]

STATUTORY NOTES

Cross References. — City manager form of government, § 50-801 et seq.

50-517, referred to in subsection A, were repealed by S.L. 1972, ch. 283, § 2. For present comparable law, see § 34-1701 et seq.

Compiler's Notes. — Sections 50-502 —

50-704. Vacancies — Appointment. — A vacancy on the council shall be filled by appointment made by the mayor with the consent of the council, which appointee shall serve only until the next general city election, at which such vacancy shall be filled for the balance of the original term. [1967, ch. 429, § 135, p. 1249.]

JUDICIAL DECISIONS

Disclosure of Names and Resumes of Applicants.

Because a member of a city council is a local governmental official, not an employee, the name and resume of an applicant to be appointed to a city council are not exempt from

disclosure; city was required to disclose names and resumes of applicants for city council to publisher requesting records. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996).

50-705. Meetings of council — Quorum — Discipline. — Regular meetings of the city council shall be held each month at such place and times as the council may establish by ordinance. At all meetings of the council a majority of the full council shall constitute a quorum for the transaction of business; unless otherwise provided by law, a question before the council shall be decided by a majority of the members present.

For the purpose of holding regular or special meetings a number less than a majority may compel the attendance of absent members in such manner and under such penalties as the council may, by ordinance, have previously prescribed. Regular or special meetings of the council may be recessed until further notice. [1967, ch. 429, § 136, p. 1249.]

STATUTORY NOTES

Cross References. — Open public meetings, §§ 67-2340 to 67-2343.

Compelling attendance of witnesses before council, § 50-216.

RESEARCH REFERENCES

A.L.R. — Abstention from voting of member of municipal council present at session as

affecting requisite voting majority. 63 A.L.R.3d 1072.

50-706. Special meetings of council. — One half (1/2) plus one (1) of the members of the full council shall have the power to call special meetings of the city council, the object of which shall be submitted to the council in writing; the call and object, as well as the disposition thereof, shall be entered upon the journal of the clerk. [1967, ch. 429, § 137, p. 1249.]

JUDICIAL DECISIONS

Cited in: *Buckalew v. City of Grangeville*, 97 Idaho 168, 540 P.2d 1347 (1975).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Entry on journal.
Notice.

Entry on Journal.

Entry made by city clerk upon journal at special meeting setting forth that call for special meeting was made and its object and action taken by council at such meeting was sufficient compliance with former similar section. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

Notice.

Where there was a special meeting of city council and mayor and all councilmen except one were present, any business could have been transacted that did not incur an indebtedness, although call for meeting was not made in writing as required by former similar section. *Sommercamp v. Kelly*, 8 Idaho 712, 71 P. 147 (1902).

Former similar section evidently contemplated that all members of the council could have been found within the city. It was unnecessary to give notice to a member of a special meeting when he was at the time absent from the state or county and could not be notified of the time, and, if notified, could not reach the place of meeting in time for the meeting. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

Former similar section did not require a written notice to be served on the members of the council. It did require that the object of the meeting should have been submitted to the council in writing. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

50-707. Assignment of council seats. — Any city, by ordinance, may assign a number to each council seat. Upon the adoption of such an ordinance, and at least one hundred twenty (120) days prior to the next general election, the city clerk shall assign a number for each council seat. Any candidate seeking election to the council shall file for one (1) of the assigned council seats. [I.C., § 50-707, as added by 1984, ch. 108, § 1, p. 250.]

STATUTORY NOTES

Prior Laws. — Former § 50-707, which comprised S.L. 1967, ch. 429, § 138, p. 1249, was repealed by S.L. 1969, ch. 255, § 6.

50-707A. Election of councilmen by districts. — (1) Any city may, by ordinance, provide for districts and the election of councilmen by districts. Upon the adoption of such an ordinance and at least one hundred twenty (120) days prior to each general election, the governing body of the city shall establish the territory of council districts in accordance with this section.

(2) Each district shall consist of one or more contiguous election precincts and each district shall, to the nearest extent possible, contain the same number of people based upon the most recent federal census.

(3) Each city providing for the election of councilmen by districts shall establish the number of districts corresponding to the number of council seats determined by the city pursuant to section 50-701, Idaho Code, or for any city having a governing body governed by the provisions of sections 50-801 through 50-812, Idaho Code, the number of council seats determined by the city pursuant to section 50-805, Idaho Code.

(4) Upon adoption of such an ordinance, a council shall determine, not less than ninety (90) days before the next general city election, if council

members are to be elected by electors from the entire city, or by the electors of the said geographic district. The council shall also determine, not less than ninety (90) days before the next general election, the method of the implementation of this ordinance. [I.C., § 50-707A, as added by 1984, ch. 108, § 2, p. 250.]

50-707B. Majority may be required for election — Runoff election. [Effective until January 1, 2011.] — A city may, by ordinance, provide that a majority of the votes for any candidate running for a council seat adopted by a city in accordance with section 50-707 or 50-707A, Idaho Code, shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff election shall be conducted as in the general election in a manner and at such time within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-429, Idaho Code. The ballot shall be prepared by the city clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the city clerk not less than twenty (20) days preceding any runoff election, and sample ballots shall be printed not less than eighteen (18) days preceding the runoff election. [I.C., § 50-707B, as added by 1984, ch. 108, § 3, p. 250; am. 2002, ch. 75, § 18, p. 164; am. 2006, ch. 105, § 13, p. 288.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 105, substituted “shall be required” for “may be required” in the first sentence, and substituted the present last two sentences for the former last sentence which read: “The first notice of election shall be made by the city clerk not less than twenty (20) days next

preceding any runoff election, and the designation of polling places shall be made by the city clerk not less than twenty (20) days next preceding any runoff election.”

Compiler’s Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-707B.

50-707B. Majority may be required for election — Runoff election. [Effective January 1, 2011.] — A city may, by ordinance, provide that a majority of the votes for any candidate running for a council seat adopted by a city in accordance with section 50-707 or 50-707A, Idaho Code, shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff election shall be conducted by the county clerk as in the general election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-405, Idaho Code. The ballot shall be prepared by the county clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the county commissioners not less than twenty (20) days preceding any runoff election, and sample ballots shall be printed not less than eighteen (18) days

preceding the runoff election. [I.C., § 50-707B, as added by 1984, ch. 108, § 3, p. 250; am. 2002, ch. 75, § 18, p. 164; am. 2006, ch. 105, § 13, p. 288; am. 2009, ch. 341, § 124, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the third sentence, inserted “by the county clerk” and “consistent with chapter 14, title 34, Idaho Code,” and updated the last section reference; in the fourth sentence, substituted “county clerk” for “city clerk”; and, in the last sentence, substituted “county commissioners” for “city clerk.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-707B.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-708. Examination of accounts of fiscal officers. — At least once in each quarter of each year, the council shall examine, either in open session or by committee, the accounts and doings of all officers or other persons having the care, management or disposition of moneys, property or business of the city. [1967, ch. 429, § 139, p. 1249.]

CHAPTER 8

COUNCIL-MANAGER PLAN

SECTION.

- 50-801. Cities may adopt plan.
- 50-802. Instituting election, petition — Resolution.
- 50-803. Time for holding special election on proposition. [Effective until January 1, 2011.]
- 50-803. Time for holding special election on proposition. [Effective January 1, 2011.]
- 50-804. Proposition to be voted.
- 50-805. Governing body — Size.
- 50-806. Election of officials following adoption — Determining successful candidates — Designation of seats. [Effective until January 1, 2011.]

SECTION.

- 50-806. Election of officials following adoption — Determining successful candidates — Designation of seats. [Effective January 1, 2011.]
- 50-807. Effective date following adoption of plan.
- 50-808. Powers — Duties of the council.
- 50-809. Mayor.
- 50-810. Powers of the mayor.
- 50-811. City manager — Duties.
- 50-812. Discontinuance of council-manager plan — Proposition to be voted.
- 50-813. Calculation for number of required signatures.

50-801. Cities may adopt plan. — Any city within the state of Idaho, organized under the general laws of the state, special chapter, or a general incorporation act, may adopt the council-manager plan of government by proceedings as herein provided. [1967, ch. 429, § 140, p. 1249; am. 1984, ch. 156, § 1, p. 381.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-802. Instituting election, petition — Resolution. — Procedure for instituting a special election on adoption of the council-manager plans

shall be by petition of electors as provided for initiative in section 50-501, Idaho Code, or by resolution passed by one-half (1/2) plus one (1) of the members of the full council. [1967, ch. 429, § 141, p. 1249; am. 1984, ch. 156, § 2, p. 381.]

50-803. Time for holding special election on proposition. [Effective until January 1, 2011.] — Within ten (10) days after the filing of such petition or resolution with the city clerk, the mayor shall, by proclamation, establish a date for holding a special election on the question of adopting the council-manager plan, such date to be determined as follows: (1) when the petition or resolution is filed with the city clerk during a year when no general city election is to be held, such election shall be held within sixty (60) days following filing of such petition or resolution; (2) when the petition or resolution is filed with the city clerk during a year when a general city election is to be held, such election shall be held not less than sixty (60) days prior to the date for holding general city elections. [1967, ch. 429, § 142, p. 1249; am. 1984, ch. 156, § 3, p. 381.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-803.

50-803. Time for holding special election on proposition. [Effective January 1, 2011.] — Within ten (10) days after the filing of such petition or resolution with the city clerk, the mayor shall, by proclamation, establish a date for holding a special election on the question of adopting the council-manager plan, such date to be determined as follows:

(1) When the petition or resolution is filed with the city clerk during a year when no general city election is to be held, such election shall be held on the date authorized in section 34-106, Idaho Code, that is nearest to but not less than sixty (60) days following filing of such petition or resolution;

(2) When the petition or resolution is filed with the city clerk during a year when a general city election is to be held, such election shall be held on the date for holding general city elections. [1967, ch. 429, § 142, p. 1249; am. 1984, ch. 156, § 3, p. 381; am. 2009, ch. 341, § 125, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in subsection (1), substituted “shall be held on the date authorized in section 34-106, Idaho Code, that is nearest to but not less than sixty (60) days following filing” for “shall be held within sixty (60) days following filing”; and, in subsection (2), substituted “shall be held on the date” for “shall be

held not less than sixty (60) days prior to the date.”

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-803.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-804. Proposition to be voted. — At such election the proposition to be submitted to the electors shall be: “Shall the City of adopt the

council-manager plan of government, as set forth in sections 50-801 through 50-812, Idaho Code?" [1967, ch. 429, § 143, p. 1249; am. 1984, ch. 156, § 4, p. 381.]

50-805. Governing body — Size. — The governing body of any city governed by the provisions of sections 50-801 through 50-812[, Idaho Code,] shall consist of five (5) or seven (7) councilmen. Should the proposition be adopted under section 50-804[, Idaho Code], the governing body shall consist of a council equal in number to the councilmen plus the mayor under the existing form of government, unless subsequently changed as provided by section 50-703[, Idaho Code]. [1967, ch. 429, § 144, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

RESEARCH REFERENCES

Am. Jur. — 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions, § 163.

50-806. Election of officials following adoption — Determining successful candidates — Designation of seats. [Effective until January 1, 2011.] — (1) When the proposition submitted to the electors under section 50-803, subsection (1), Idaho Code, received a favorable vote, officials shall be elected at a special election, called for that purpose, to be held not more than sixty (60) days following the date on which the proposition was submitted to the voters; when the proposition submitted to the electors under subsection (2) received a favorable vote, officials shall be elected at the succeeding general city election.

Determination of successful candidates at either a special or general election shall be as herein provided: A. When the council is to consist of five (5) members, the three (3) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and two (2) to serve two (2) year terms or so much thereof as remains; B. When the council is to consist of seven (7) members, the four (4) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and three (3) to serve two (2) year terms or so much thereof as remains. At each general city election thereafter, councilmen shall be elected to fill the unexpired terms.

(2) By ordinance, the city may assign a number to each council seat. In that event candidates will file for a designated seat and the candidate receiving the largest number of votes for the seat he has filed for shall be declared elected. [1967, ch. 429, § 145, p. 1249; am. 1981, ch. 158, § 1, p. 270.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-806.

RESEARCH REFERENCES

Am. Jur. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 218.

C.J.S. — 62 C.J.S., Municipal Corporations, § 370.

50-806. Election of officials following adoption — Determining successful candidates — Designation of seats. [Effective January 1, 2011.] — (1) When the proposition is submitted to the electors under section 50-803(1), Idaho Code, officials shall be elected at the same election during which the proposition is submitted to the voters; when the proposition submitted to the electors under subsection (2) of section 50-803, Idaho Code, officials shall be elected at the same general city election. If any proposition submitted to the electors under section 50-803, Idaho Code, fails to receive a favorable vote, the election of officials at the same election shall be declared null and void.

Determination of successful candidates at either a special or general election shall be as herein provided: A. When the council is to consist of five (5) members, the three (3) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and two (2) to serve two (2) year terms or so much thereof as remains; B. When the council is to consist of seven (7) members, the four (4) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and three (3) to serve two (2) year terms or so much thereof as remains. At each general city election thereafter, councilmen shall be elected to fill the unexpired terms.

(2) By ordinance, the city may assign a number to each council seat. In that event candidates will file for a designated seat and the candidate receiving the largest number of votes for the seat he has filed for shall be declared elected. [1967, ch. 429, § 145, p. 1249; am. 1981, ch. 158, § 1, p. 270; am. 2009, ch. 341, § 126, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the first paragraph in subsection (1), which formerly read: "When the proposition submitted to the electors under section 50-803, subsection (1), Idaho Code, received a favorable vote, officials shall be elected at a special election, called for that purpose, to be held not more than sixty (60) days following the date on which the proposition was submitted to the voters; when the

proposition submitted to the electors under subsection (2) received a favorable vote, officials shall be elected at the succeeding general city election."

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-806.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-807. Effective date following adoption of plan. — The effective date of the council-manager plan shall be not more than seventy-five (75)

days following the election of officials, to be determined by the incumbent council. [1967, ch. 429, § 146, p. 1249; am. 1984, ch. 156, § 5, p. 381.]

50-808. Powers — Duties of the council. — The council shall have all powers delegated under general law, appoint a chief administrative officer to be known as the city manager, and confirm all appointments of department heads made by the city manager. [1967, ch. 429, § 147, p. 1249.]

50-809. Mayor. — (1) At the time of installing and swearing in the councilmen following each general city election, or special election called for the purpose of electing officials, the council shall elect one (1) of their members to be designated the mayor. He shall serve for a period of two (2) years unless sooner removed by the council or becomes disqualified.

(2) By ordinance, a city may provide for the direct election of the mayor by the voters. When direct election is permitted, the mayor's position on the ballot shall replace that of one (1) councilman. Prior to the opening of the filing for candidacy for mayor, the term of the direct elected mayor shall be designated, by ordinance, as two (2) years or four (4) years. The direct elected mayor shall have no changes in his powers as defined in section 50-810, Idaho Code. [1967, ch. 429, § 148, p. 1249; am. 1975, ch. 203, § 1, p. 564.]

50-810. Powers of the mayor. — The mayor shall preside at the meetings of the council and perform such other duties consistent with his office as may be imposed by the council. He shall be entitled to a vote on all matters coming before the council, but shall possess no veto power. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts of [for] the purposes of serving civil processes, and by the governor for military purpose. He may use the title of mayor in any case in which the execution of contracts or other legal instruments in writing, or other necessity arising from the general laws of this state may so require, but this shall not be construed as conferring upon him administrative powers or functions of a mayor under the general laws of the state. [1967, ch. 429, § 149, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the third sentence was added by the compiler, as the probable intended word.

50-811. City manager — Duties. — The council shall appoint a city manager to be the administrative head of the city government under the direction and supervision of such council and who shall hold office at the pleasure of the majority of the members thereof. Before entering upon the duties of his office, such city manager shall take the official oath for the support of the government and the faithful performance of his duties, and shall execute a bond in favor of the city in such sum as may be fixed by the council. He shall:

1. Have general supervision over the business of the city.
2. See that the ordinances and policies of the city are complied with and faithfully executed.
3. Attend all meetings of the council at which his attendance is required by that body.
4. Recommend for adoption to the council such measures as he may deem necessary or expedient.
5. Make the appointment of all department heads, subject to such civil service regulations as may relate thereto.
6. Prepare and submit to the council such reports as may be required by that body, or as he may deem advisable.
7. Keep the council fully advised of the financial condition of the city and its future needs.
8. Prepare and submit to the council a tentative budget for the next fiscal year.
9. Perform such other duties as the council may establish by ordinance or resolution.
10. Possess such powers as are vested in the mayor as provided in section 50-606[, Idaho Code]. [1967, ch. 429, § 150, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion at the end of the section was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

ANALYSIS

Policy decisions.

—Lawsuit.

Policy Decisions.

—Lawsuit.

The decision to file a lawsuit is not a ministerial or administrative decision but is a policy decision that must be made by the governing board pursuant to the open meet-

ing laws, and the city manager is appointed by the city council as the administrative head of the city government under the direction and supervision of such council, not as the city's policymaker. *City of McCall v. Buxton*, — Idaho —, 201 P.3d 629 (2009).

RESEARCH REFERENCES

Am. Jur. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 163.

C.J.S. — 62 C.J.S., Municipal Corporations, § 370.

50-812. Discontinuance of council-manager plan — Proposition to be voted. — Any city which shall have operated for more than six (6) years under the provisions of sections 50-801 through 50-812, Idaho Code, may resume operation under sections 50-601 through 50-708, Idaho Code, by proceedings held as sections 50-801 through 50-812, Idaho Code, provide for adoption of the council-manager plan. The proposition to be submitted shall be: "Shall the City of retain its organization under the 'council-

manager plan'?" [1967, ch. 429, § 151, p. 1249; am. 1984, ch. 156, § 6, p. 381.]

50-813. Calculation for number of required signatures. — In cases where a city is operating under the council-manager plan, if there is no direct mayoral election, and a statute provides for petitions or elections based upon the total number of votes cast for mayor at the last preceding city election, the calculation of signatures or votes necessary under state law shall be based upon the total number of votes cast for the city councilman who received the highest number of votes at the last preceding city election. [I.C., § 50-813, as added by 1978, ch. 257, § 1, p. 562; am. 1984, ch. 156, § 7, p. 381.]

CHAPTER 9

ORDINANCES — CITY CODE — RECORDS

SECTION.

- 50-901. Ordinances — Style — Publication —
When effective — Immediate
operation in emergencies.
- 50-901A. Summarization of ordinances per-
mitted — Requirements.
- 50-902. Passage of ordinances.
- 50-903. Grant of power.
- 50-904. Arrangement of ordinances.
- 50-905. Repeal of conflicting provisions.
- 50-906. Publication in book or pamphlet
form.

SECTION.

- 50-907. Classification and retention of mu-
nicipal records.
- 50-908. Designation, powers and responsibil-
ities of municipal records
management officers — Du-
ties of city officials concerning
records.
- 50-909. Retention of city records using pho-
tographic and digital media.
- 50-910. [Repealed.]

50-901. Ordinances — Style — Publication — When effective — Immediate operation in emergencies. — The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of" and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that in cases of riot, infections or contagious disease, or other impending danger requiring immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; provided further, that nationally recognized codes such as, but not limited to, those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as, but not limited to, those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by a city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided

further, that at least one (1) copy of the supplemental code, duly certified by the city clerk, shall have been filed for use and examination by the public in the office of the clerk of the city prior to the adoption of the ordinance by the city council. Following its adoption by the city, one (1) copy of the supplemental code shall be retained by the city, which shall be filed in the office of the city clerk. [1967, ch. 429, § 152, p. 1249; am. 1971, ch. 9, § 1, p. 20; am. 1979, ch. 19, § 1, p. 29; am. 1981, ch. 145, § 1, p. 249; am. 1982, ch. 66, § 1, p. 130; am. 2001, ch. 156, § 1, p. 563.]

STATUTORY NOTES

Cross References. — Open public meetings, §§ 67-2340 — 67-2343.

General power to enact ordinances, § 50-302.

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

Section 2 of S.L. 1971, ch. 9, provided that the act should be in full force and effect on and after July 1, 1971.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Style.

Provision relating to style was directory and enacting clause of the village ordinance as follows: "Be it ordained by the town of Post

Falls," was sufficient, as such enacting clause indicated intention and declaration of village to legislate. *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 333 (1909).

RESEARCH REFERENCES

A.L.R. — Validity and construction of statute or ordinance prohibiting desecration of church. 90 A.L.R.3d 1128.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals. 1 A.L.R.4th 994.

Validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 A.L.R.4th 922.

Right of municipal corporation to review of unfavorable decision in action or prosecution

for violation of ordinance, modern status. 11 A.L.R.4th 399.

Construction of provisions of statute or ordinance governing occasion, time or manner of summary destruction of domestic animals by public authorities. 46 A.L.R.4th 839.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as pit bulls or bull terriers. 80 A.L.R.4th 70.

50-901A. Summarization of ordinances permitted — Requirements. — (1) In lieu of publishing the entire ordinance under section 50-901, Idaho Code, the city may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the city;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
- (e) Any other information necessary to provide an accurate summary; and
- (f) A statement that the full text is available at the city hall.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains legal descriptions, or contains provisions regarding taxation or penalties concerning real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering one or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for written legal description of property provided they contain sufficient detail to clearly define the area with which the ordinance is concerned.

(3) Before submission of a summary to a newspaper for publication under this section, the legal advisor of the city shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

(4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided by the city clerk to any citizen on personal request. [I.C., § 50-901A, as added by 1979, ch. 19, § 2, p. 29; am. 1981, ch. 145, § 2, p. 249.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1981, ch. 145 declared an emergency. Approved March 27, 1981.

50-902. Passage of ordinances. — The passage or adoption of every ordinance, and every resolution or order to enter a contract shall be by roll call of the council with the yea or nay of each being recorded, and to pass or adopt any ordinance or any such resolution or order, a majority of the council shall be required.

Ordinances shall be read on three (3) different days, two (2) readings of which may be by title only and one (1) reading of which shall be in full, unless one half (1/2) plus one (1) of the members of the full council shall dispense with the rule. In preparation, passage and publication, ordinances shall contain no subject which shall not be clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless all ordinances, which are intended to amend existing ordinances, shall have the words which are added to such ordinance underlined; when the amendment is to strike out or repeal any part of an existing ordinance, the letter, figure, word or words stricken or repealed shall be printed with a line through such letter, figure, word or words in the printed bill to indicate the part stricken or repealed. Provided, however, that when an ordinance includes or consists of the repeal of an entire section or chapter, it shall not be necessary to print such repealed section or chapter.

All ordinances may be proved by a certificate of the clerk under the seal of the city and when printed or published individually in book or pamphlet form by authority of the city, shall be read and received in evidence in all

courts and places without further proof. [1967, ch. 429, § 153, p. 1249; am. 1972, ch. 18, § 1, p. 24.]

JUDICIAL DECISIONS

ANALYSIS

Judicial notice.
Resolution.

Judicial Notice.

Existence of an ordinance relevant to adjudication of a dispute is a question well-suited to the application of I.R.E. 201, and if an ordinance's existence is not reasonably in dispute because it is generally known within the territorial jurisdiction of the trial court, or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, then it may be accepted as evidence by judicial notice. *Doe v. Doe*, — Idaho —, 195 P.3d 745 (Ct. App. 2008).

Resolution.

The clerk of the city council testified that a motion authorizing the lease of former hospi-

tal to state for use as correctional facility was presented at the December 20, 1989, meeting of the city council and that the city council took a final vote at that time. The trial court concluded that the oral motion made and passed by the city council amounted, in substance, to a "resolution" within the meaning of this section prior to execution of the lease. The trial court did not abuse its discretion in admitting the copy of the resolution into evidence. *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992).

Cited in: *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Amendments.
Ratification of contracts.
Repeals.
Titles.

Amendments.

Amendatory ordinance which purported to amend ordinance by inserting therein particular language without indicating where such insertion shall be made, or containing entire ordinance as amended, or particular section amended, was void. *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 333 (1909).

Ratification of contracts.

Contract made by city council in an emergency without full compliance with former similar section was held to have been ratified by later allowance of claim thereon. *Rice v. Gwinn*, 5 Idaho 394, 49 P. 412 (1897).

Repeals.

Ordinance could be repealed only in

pursuance of same method required for its enactment. *Beem v. Davis*, 31 Idaho 730, 175 P. 959 (1918).

Titles.

It was sufficient if title in its general scope clearly expressed object and purpose of such ordinance. *Village of St. Anthony v. Brandon*, 10 Idaho 205, 77 P. 322 (1904); *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 335 (1909).

Title of ordinance was held sufficient. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

50-903. Grant of power. — Any city is hereby empowered to revise, codify, and compile from time to time and to publish in book or pamphlet form all ordinances of such city of a general and permanent nature and to make such changes, alterations, modifications, additions and substitutions therein as it may deem best to the end that a complete simplified code of such ordinances then in force shall be presented, but with errors, inconsis-

tencies, repetitions and ambiguities therein eliminated. [1967, ch. 429, § 154, p. 1249.]

50-904. Arrangement of ordinances. — The ordinances in such revision, codification and compilation shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signatures of the mayor, attestations and other formal parts. [1967, ch. 429, § 155, p. 1249.]

50-905. Repeal of conflicting provisions. — Such revision shall be by one (1) ordinance embracing all ordinances of a general and permanent nature preserved as changed or added to and perfected by such revision, codification and compilation and shall be a repeal of all ordinances in conflict with such revision, codification and compilation, but all ordinances then in force shall continue in force after such revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor. The only title necessary for such ordinance shall be "An ordinance for revising, codifying and compiling the general ordinances of the city of" [1967, ch. 429, § 156, p. 1249.]

50-906. Publication in book or pamphlet form. — Such ordinances when so revised, codified, compiled and published in book or pamphlet form by authority of the city need not be printed or published in any other manner. [1967, ch. 429, § 157, p. 1249.]

50-907. Classification and retention of municipal records. —

(1) "Permanent records" shall consist of:

- (a) Adopted meeting minutes of the city council and city boards and commissions;
- (b) Ordinances and resolutions;
- (c) Building plans and specifications for commercial projects and government buildings;
- (d) Fiscal year-end financial reports;
- (e) Records affecting the title to real property or liens thereon;
- (f) Cemetery records of lot ownership, headstone inscriptions, interment, exhumation and removal records, and cemetery maps, plot plans and surveys;
- (g) Poll books, excluding optional duplicate poll books used to record that the elector has voted, tally books, sample ballots, campaign finance reports, declarations of candidacy, declarations of intent, and notices of election; and
- (h) Other documents or records as may be deemed of permanent nature by the city council.

Permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(2) "Semipermanent records" shall consist of:

- (a) Claims, canceled checks, warrants, duplicate warrants, purchase orders, vouchers, duplicate receipts, utility and other financial records;
- (b) Contracts;
- (c) Building applications for commercial projects and government buildings;
- (d) License applications;
- (e) Departmental reports;
- (f) Bonds and coupons; and
- (g) Other documents or records as may be deemed of semipermanent nature by the city council.

Semipermanent records shall be kept for not less than five (5) years after the date of issuance or completion of the matter contained within the record.

(3) "Temporary records" shall consist of:

- (a) Building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval;
- (b) Cash receipts subject to audit;
- (c) Election ballots and duplicate poll books; and
- (d) Other documents or records as may be deemed of temporary nature by the city council.

Temporary records shall be retained for not less than two (2) years, but in no event shall financial records be destroyed until completion of the city's financial audit as provided in section 67-450B, Idaho Code.

(4) Semipermanent and temporary records may only be destroyed by resolution of the city council, and upon the advice of the city attorney. Such disposition shall be under the direction and supervision of the city clerk. The resolution ordering destruction shall list in detail records to be destroyed. Prior to destruction of semipermanent records, the city clerk shall provide written notice, including a detailed list of the semipermanent records proposed for destruction, to the Idaho state historical society thirty (30) days prior to the destruction of any records.

(5) Prior to January 1, 2007, each city council shall adopt by resolution a records retention schedule, listing the various types of city records and the retention period for each type of record. [I.C., § 50-907, as added by 2005, ch. 41, § 2, p. 163.]

STATUTORY NOTES

Cross References. — State historical society, § 67-4113. comprised 1967, ch. 429, § 158, p. 1249; am. 1976, ch. 50, § 1, p. 150, was repealed by S.L.

Prior Laws. — Former § 50-907, which 2005, ch. 41, § 1.

50-908. Designation, powers and responsibilities of municipal records management officers — Duties of city officials concerning records. — (1) The city clerk shall serve as the municipal records manager in each city, and each department may designate a department records manager who reports to the city clerk. The municipal records manager shall supervise the administration of city records, including:

- (a) Ensuring the orderly and efficient management of municipal records in compliance with state and federal statutes and regulations and city ordinances, resolutions and policies;
 - (b) Identification and appropriate administration of records of enduring value for historical or other research;
 - (c) Overseeing retention and destruction of municipal records as directed by state and federal statutes and regulations and city ordinances, resolutions and policies; and
 - (d) Coordinating transfer of permanent records to the Idaho state historical society's permanent records repository, with the assistance of the state archivist.
- (2) All city officials, elected, appointed and staff, shall:
- (a) Protect the records in their custody;
 - (b) Cooperate with the municipal records manager on the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value; and
 - (c) Pass on to their successor records necessary for the continuing conduct of city business.

All city records are property of the city, and no city official, elected, appointed or staff, shall have any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction or removal of city records is prohibited. [I.C., § 50-908, as added by 2005, ch. 41, § 3, p. 163.]

STATUTORY NOTES

Cross References. — State historical society, § 67-4113.

Prior Laws. — Former § 50-908, which comprised 1967, ch. 429, § 159, p. 1249; am. 1997, ch. 143, § 1, p. 415, was repealed by S.L. 2005, ch. 41, § 1.

Compiler's Notes. — The reference to the state archivist, at the end of paragraph (1)(d), is to the state archivist at the Idaho state historical society.

50-909. Retention of city records using photographic and digital media. — (1) A city officer may reproduce and retain documents in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the document in paper form during the period for which the document must be retained and shall preclude unauthorized alteration of the document.

(2) If the medium chosen for retention is photographic, all film used must meet the quality standards of the American national standards institute (ANSI).

(3) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

(4) A document retained by the city in any form or medium permitted under this section shall be deemed an original public record for all purposes. A reproduction or copy of such a document, certified by the city clerk, shall

be deemed to be a transcript or certified copy of the original and shall be admissible before any court or administrative hearing.

(5) Once a paper document is retained in a nonpaper medium as authorized by this section, the original paper document may be disposed of or returned to the sender, except in the case of “permanent records,” as defined in section 50-907, Idaho Code. Paper originals of permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society’s permanent records repository upon resolution of the city council.

(6) Whenever any record is reproduced by photographic or digital process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fire-resistant vault, or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record. [I.C., § 50-909, as added by 2005, ch. 41, § 4, p. 163; am. 2009, ch. 11, § 20, p. 14.]

STATUTORY NOTES

Cross References. — State historical society, § 67-4113.

Prior Laws. — Former § 50-909, which comprised 1967, ch. 429, § 160, p. 1249, was

repealed by S.L. 2005, ch. 41, § 1.

Amendments. — The 2009 amendment, by ch. 11, substituted “‘permanent records’” for “‘permanent’ records” in subsection (5).

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Admission in evidence.

Burden of proof.

Validity of ordinances.

Admission in Evidence.

Admission into evidence of resolution passed by city council annexing disputed territory was proper though contra to provisions of charter, since statutory provisions constituted rules of evidence for court not for the city. *Boise City v. Better Homes, Inc.*, 72 Idaho 441, 243 P.2d 303 (1952).

Burden of Proof.

Where an ordinance was received by the court as proof, it was the duty of the party resisting the admission of the ordinance in evidence to plead and prove any omissions or

neglect in the adoption of the ordinance. *City of Idaho Falls v. Grimmett*, 63 Idaho 90, 117 P.2d 461 (1941).

Validity of Ordinances.

Proof that ordinances introduced in evidence in prosecution of city clerk for embezzlement were adopted on previous dates and were attested by defendant, and that their dates and date of certificate showed that they were effective over period when defendant was in office, constituted prima facie evidence that ordinances were valid and subsisting. *State v. Clark*, 47 Idaho 750, 278 P. 776 (1929).

50-910. Photographic or digital retention of city records. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 50-910, as added by 1997,

ch. 143, § 2, p. 415, was repealed by S.L. 2005, ch. 41, § 1.

CHAPTER 10

FINANCES

SECTION.

- 50-1001. Fiscal year.
- 50-1002. Annual budget.
- 50-1003. Annual appropriations bill — Amending appropriation ordinance — Special appropriation upon petition or election.
- 50-1004. Special tax assessment — Warrant redemption fund.
- 50-1005. [Repealed.]
- 50-1005A. Accumulation of fund balances.
- 50-1006. Expenditures not to exceed appropriation — Exceptions.
- 50-1007. Certification and collection of city taxes.
- 50-1008. Collection of special assessments — Certification to tax collector — Widow's exemption.
- 50-1009. [Repealed.]
- 50-1010. Audit of city finances — Audit to be filed.
- 50-1011. Publication of financial statements — Noncompliance.
- 50-1012. [Repealed.]
- 50-1013. Deposit and investment of funds.
- 50-1013A. Investment of deposits of deferred compensation plans.
- 50-1014. Transfer of funds.
- 50-1015. Disposition of license fees and fines.
- 50-1015A. Disposition of parking fees and fines.
- 50-1016. Deductions from wages.
- 50-1017. Presentation of claims.
- 50-1018. Payment of claims.
- 50-1019. Purposes for which bonds may be issued — Limitation on amount.
- 50-1020. Waterworks — Light and power plants — Sewerage systems.
- 50-1021. Previous issues validated.
- 50-1022. Joint services.
- 50-1023. Joint services — Agreement on apportionment.
- 50-1024. Joint services — Bond election in each city.
- 50-1025. Joint services — Committee for construction or purchase.
- 50-1026. City bonds — Ordinance — Election. [Effective until January 1, 2011.]

SECTION.

- 50-1026. City bonds — Ordinance — Election. [Effective January 1, 2011.]
- 50-1026A. City bonds — Pledge of revenues.
- 50-1027. Revenue bonds — Short title.
- 50-1028. Grant of authority.
- 50-1029. Definitions.
- 50-1030. Powers.
- 50-1031. Supervision of projects.
- 50-1032. Projects to be self-supporting.
- 50-1033. Use of projects — Revenue.
- 50-1034. Preliminary expenses.
- 50-1035. Ordinance prior to construction — Election. [Effective until January 1, 2011.]
- 50-1035. Ordinance prior to construction — Election. [Effective January 1, 2011.]
- 50-1035A. Issuance of revenue bonds at rates of interest in excess of original specification.
- 50-1036. Bonds — Form — Conditions — Bond anticipation notes.
- 50-1037. Bonds — Issuance — Terms — Conditions.
- 50-1038. Validity of bonds.
- 50-1039. Lien of bonds.
- 50-1040. City not liable on bonds.
- 50-1041. Tax levy to pay bonds prohibited.
- 50-1042. Projects and bonds exempt from taxation.
- 50-1043. Short title.
- 50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement, and collect certain city nonproperty taxes.
- 50-1045. City property tax relief fund.
- 50-1046. City local-option nonproperty taxes permitted by sixty per cent majority vote.
- 50-1047. General provisions.
- 50-1048. Coordination with county local-option nonproperty taxes.
- 50-1049. Collection and administration of local-option nonproperty taxes by state tax commission — Distribution.

50-1001. Fiscal year. — The fiscal year of each city shall commence on the first day of October. [1967, ch. 429, § 161, p. 1249; am. 1976, ch. 45, § 1, p. 122.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

Compiler's Notes. — Section 31 of S.L. 1976, ch. 45 read: "**Transitional budget and levy.** The budget adopted by each city in

the state of Idaho on or prior to March 31, 1977 shall provide for a fiscal year, January 1 to September 30, 1977. The levy certified to the county commissioners on the second Monday of September in 1977 shall be based only upon either the said budget and an estimate of the expenditures for an additional three month period, October 1 through December 31, 1977 or only upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

"The budget adopted by the county commissioners in each of the counties in the state of Idaho during the week of the second Monday in February 1977 shall provide for a fiscal year from the second Monday in January to

September 30, 1977. The levy certified on the second Monday of September, 1977 shall be based only upon either said budget and include an estimate of expenditures for an additional three month period, October 1 through December 31, 1977 or upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

"Prior to October 1, 1977 and every year thereafter, all cities and counties in the state of Idaho shall adopt a budget for the ensuing fiscal year, October 1 through September 30."

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Change in Payment Time.

Change in time of payment of taxes did not deprive city of amount of taxes levied for fiscal year, even though such taxes were not col-

lected during fiscal year for which they were levied. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

50-1002. Annual budget. — The city council of each city shall, prior to passing the annual appropriation ordinance, prepare a budget, estimating the probable amount of money necessary for all purposes for which an appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the proposed expenditures by department, fund or service, as nearly as may be practicable, and specifying any fund balances accumulated under section 50-1005A, Idaho Code. To support such proposed expenditure, the council shall prepare an estimate of the total revenue anticipated during the ensuing fiscal year for which a budget is being prepared classifying such receipts by source as nearly as may be possible and practicable, said estimate to include any surplus not subject to the provisions of sections 50-1004 and 50-1005A, Idaho Code, nor shall said estimated revenue include funds accumulated under section 50-236, Idaho Code. The proposed budget for the ensuing fiscal year shall list expenditures and revenues during each of the two (2) previous fiscal years by fund and/or department. Following tentative approval of the revenues and expenditures estimated by the council, the same shall be entered at length in the journal of proceedings. Prior to certifying to the county commissioners, a notice of time and place of public hearing on the budget, which notice shall include the proposed expenditures and revenues by fund and/or department including the two (2) previous fiscal years, and a statement of the estimated revenue from property taxes and the total amount from sources other than property taxes of the city for the ensuing fiscal year, shall be published twice at least seven (7) days apart in the official newspaper. At said hearing any interested person may appear and show cause, if any he has, why such proposed budget should or should not be adopted. [1967, ch. 429, § 162, p. 1249; am. 1972, ch. 22, § 1, p. 27; am.

1976, ch. 45, § 2, p. 122; am. 1981, ch. 318, § 3, p. 662; am. 1994, ch. 89, § 1, p. 205.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Effect of limitation on contracts.
Payment of special improvement bonds.
Publication of annual appropriation.
Purpose and necessity of compliance.

Effect of Limitation on Contracts.

Contract by a city which incurred a total liability to an amount exceeding city's revenue for year in which contract was made was void if it failed to comply with all provisions of Const., Art. VIII, § 3, although actual debt incurred thereby would not mature in excess of city's revenue until after year in which contract was made. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Debt created by contract made by a city to settle uncertain and unliquidated damage claims against city was held to be a new debt or liability within the provisions of Const., Art. VIII, § 3, and, therefore, void if it exceeded amount of revenue provided for city for year in which contract was made. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Payment of Special Improvement Bonds.

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the

city's property, where the city never fixed any amount to be paid from general funds for improvements and the item never was included within the budget or appropriation bill. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Publication of Annual Appropriation.

Statutory provisions for publishing notice of annual estimate of municipal appropriations were mandatory. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Purpose and Necessity of Compliance.

Preparation and publication of estimate of probable amount of money necessary to be raised for all purposes was condition precedent to levy of taxes under former section governing general tax levies. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

Purpose of requiring publication of estimate was to enable inhabitants and taxpayers to become informed as to purposes for which the amounts were proposed to be levied against their property. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

50-1003. Annual appropriations bill — Amending appropriation ordinance — Special appropriation upon petition or election. — The city council of each city shall, prior to the commencement of each fiscal year, pass an ordinance to be termed the annual appropriation ordinance, which in no event shall be greater than the amount of the proposed budget, in which the corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during that year in addition to all other anticipated revenues. Provided, the amount appropriated from property tax revenues shall not exceed the amount of property tax revenue advertised pursuant to section 50-1002, Idaho Code.

Such ordinance shall specify the object and purposes for which such appropriations are made and the amount appropriated for each object or purpose. Said ordinance shall be filed with the office of the secretary of state.

The city council of any city may, by the same procedure as used in adopting the original appropriation ordinance at any time during the

current fiscal year, amend the appropriation ordinance to a greater amount than that adopted, if after the adoption of the appropriation ordinance, additional revenue will accrue to the city during the current fiscal year as a result of increase in state or federal grants or allocations, or as a result of an increase in an enterprise fund or funds to finance the operation and maintenance of governmental facilities and services which are entirely or predominantly self-supporting by user charges, or as a result of an increase in revenues from any source other than ad valorem tax revenues. A city whose property tax certification is made for the current fiscal year may amend its budget and annual appropriation ordinance, pursuant to the notice and hearing requirements of section 50-1002, Idaho Code, prior to certification to the county commissioners.

No further appropriation, except as herein provided, shall be made at any other time within such fiscal year unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city, either by petition signed by them equal in number to a majority of the number who voted at the last general city election, or approved at a special election duly called therefor, and all appropriations shall end with the fiscal year for which they are made. [1967, ch. 429, § 163, p. 1249; am. 1974, ch. 166, § 1, p. 1422; am. 1976, ch. 45, § 3, p. 122; am. 1981, ch. 318, § 4, p. 662; am. 1982, ch. 276, § 1, p. 708; am. 1987, ch. 172, § 1, p. 338; am. 1989, ch. 25, § 1, p. 29.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1982, ch. 276 declared an emergency. Approved March 31, 1982.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appropriation for indebtedness.
Flood damage as authorizing borrowing of money.
Necessity of appropriation bill.
Payment of special improvement bonds.
Petition.

Appropriation for Indebtedness.

Municipal indebtedness incurred in one fiscal year could not be paid from the revenues of a later fiscal year unless there was an appropriation and collection therefor in such later year. *Theiss v. Hunter*, 4 Idaho 788, 45 P. 2 (1896).

Failure to include in appropriation ordinance specific appropriation for payment of outstanding warrant indebtedness did not oust city council of power thereafter to make such appropriation, or in case of failure to do

so prior to time of certifying tax levy for city, it did not deprive them of jurisdiction to certify a sufficient levy within maximum prescribed by former similar section to meet such indebtedness. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

Former similar section did not contemplate an actual levy by city authorities at time of passing appropriation bill for purpose of paying outstanding indebtedness, but it rather required council to make an appropriation of a lump sum for such purpose and limited

amount that could be thus appropriated. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

Flood Damage as Authorizing Borrowing of Money.

"Casualty" or "accident," consisting of continuous floods from December 20, 1933, until after the first part of July, 1934, occurred after city adopted annual appropriation bill on June 11, 1934, so as to authorize it to borrow money to repair and restore damaged sewers without taxpayers' sanction, though bill failed to provide for such expenditures. *Ramstedt v. City of Wallace*, 55 Idaho 1, 36 P.2d 772 (1934).

Necessity of Appropriation Bill.

Passage of appropriation bill was condition precedent to authority of village trustees to levy taxes under former section governing general tax levies. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

Bond issue authorized by election was exempt from provision of former similar section that annual appropriation bill must have contained appropriation for necessary expenses.

Village of Oakley v. Wilson, 50 Idaho 334, 296 P. 185 (1931).

Payment of Special Improvement Bonds.

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city's property, where the city never fixed any amount to be paid from general funds for improvements, and the item never was included within the budget or appropriation bill. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Petition.

Finding by municipal council that petition favoring appropriation was signed by majority of legal voters was presumptively correct. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

In absence of election called for the purpose, there was no way other than by petition signed by majority of legal voters to determine whether majority of qualified voters favor appropriation. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

50-1004. Special tax assessment — Warrant redemption fund. —

At the time of passing the annual appropriation ordinance, said city councils, unless provision shall have been made as provided by law for the funding, refunding, purchase, redemption or exchange of the outstanding city warrant indebtedness, must, whenever any city shall have warrants outstanding and unpaid, for the payment of which there are no funds in the city treasury, in addition to other taxes provided by law, if such warrants amount to a sum equal to five per cent (5%) or more of the value of the taxable property of such city, levy and include a special tax assessment of not to exceed two tenths per cent (.2%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to four per cent (4%) and less than five per cent (5%) of such taxable property, they must levy and include a special tax or assessment of not to exceed sixteen hundredths per cent (.16%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to three per cent (3%) and less than four per cent (4%) of such taxable property, they must levy and include a special tax or assessment of not to exceed twelve hundredths per cent (.12%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to two per cent (2%) and less than three per cent (3%) of such taxable property, they must levy and include a special tax or assessment of not to exceed eight hundredths per cent (.08%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to one per cent (1%) and less than two per cent (2%) of such taxable property they must levy and include a special tax or assessment of not to exceed four hundredths per cent (.04%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to less than one per cent (1%) of such taxable property, then

they must levy and include such special tax or assessment on the dollar in such annual appropriation bill as shall be sufficient to pay such warrants.

All moneys arising from such special tax or assessment shall be placed in a special fund to be known as the "Warrant Redemption Fund" and the redemption of such warrants shall be paid exclusively from this fund.

All moneys in the city treasury at the end of each fiscal year not needed for that year's expenses and applicable thereto, and not subject to the provisions of section 50-1005A, Idaho Code, shall be transferred to said "Warrant Redemption Fund," if such there be. [1967, ch. 429, § 164, p. 1249; am. 1976, ch. 45, § 4, p. 122; am. 1996, ch. 208, § 21, p. 658.]

STATUTORY NOTES

Effective Dates. — Section 22 of S.L. provided that this section should be in effect 1996, ch. 208 declared an emergency and July 1, 1996. Approved March 12, 1996.

50-1005. Expenses not to precede appropriation — Interim ordinance. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which 1974, ch. 35, § 1, was repealed by S.L. 1976, comprised S.L. 1967, ch. 429, § 165; am. ch. 45, § 5 effective July 1, 1977.

50-1005A. Accumulation of fund balances. — Cities may accumulate fund balances at the end of a fiscal year and carry over such fund balances into the ensuing fiscal year sufficient to achieve or maintain city operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves. [I.C., § 50-1005A, as added by 1976, ch. 45, § 6, p. 122.]

50-1006. Expenditures not to exceed appropriation — Exceptions. — The mayor and council shall have no power to appropriate, issue or draw on the treasurer for money unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 50-1001 through 50-1042, Idaho Code, and appropriations for the class or object out of which such claim is payable has been made as provided in sections 50-1001 through 50-1042, Idaho Code. Neither the city council nor any department or officer of the corporation shall add to the corporation expenditures in any year anything over and above the amount provided in the annual appropriation bill for the year, except as herein otherwise specially provided; and no expenditures for any improvement to be paid shall exceed in any year the amount allocated for such improvement in the annual appropriation bill, provided, however, that nothing herein contained shall prevent one-half (1/2) plus one (1) of the members of the full council from declaring an emergency, the necessity for which was caused by casualty, accident, or act of nature after such annual appropriation is made. In the event of a declared emergency caused by casualty, accident, or act of nature, the city council may order the mayor and finance committee to

borrow a sufficient sum to provide for the expense incurred in abating the emergency or the making of any repairs or restoration of improvements, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy and embraced therein.

Should any judgment be obtained against the corporation, the mayor and finance committee, under the sanction of the city council, may borrow for a space of time not exceeding the close of the next fiscal year, a sufficient amount to pay the same, which sum and interest shall in like manner be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein. [1967, ch. 429, § 166, p. 1249; am. 1980, ch. 136, § 6, p. 297; am. 1987, ch. 171, § 1, p. 337; am. 1996, ch. 322, § 50, p. 1029.]

STATUTORY NOTES

Cross References. — Constitutional limitation on indebtedness, Const., Art. VIII, § 3.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

“Casualty” construed.
Emergency expenses.
Flood damage.
Judgment against city.
Pavement expense.
Payment of special improvement bonds.
Street paving.
Time of receiving revenue immaterial.

“Casualty” Construed.

Progressive decay of underside of planking of municipal wharf was not casualty or accident within meaning of former similar section. *Eaton v. Glindeman*, 33 Idaho 389, 195 P. 90 (1921).

Word “casualty”, strictly and liberally, was limited to injuries which arose solely from accident, without any element of conscious human design or intentional human agency; something not to be foreseen or guarded against; something that happens not in usual course of events; word “casualty” being synonymous with accident. *Eaton v. Glindeman*, 33 Idaho 389, 195 P. 90 (1921).

Emergency Expenses.

City council was authorized by two-thirds vote to incur indebtedness to replace water-works and fire extinguishing apparatus destroyed by fire. *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

Municipal resolution reciting necessity of incurring expense and that it was due to casualty or accident conferred no authority

when facts did not bring case within purview of former similar section. *Eaton v. Glindeman*, 33 Idaho 389, 195 P. 90 (1921).

Appropriation bill was intended to limit expenditures for fiscal year, except in certain cases of casualty or accident. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

Flood Damage.

“Casualty” or “accident,” consisting of continuous floods from December 20, 1933, until after the first part of July, 1934, occurred after city adopted annual appropriation bill on June 11, 1934, so as to have authorized it to borrow money to repair and restore damaged sewers without taxpayers’ sanction, though bill failed to provide for such expenditures. *Ramstedt v. City of Wallace*, 55 Idaho 1, 36 P.2d 772 (1934).

Judgment Against City.

Judgment against a city for amount due holders of improvement bonds could not properly authorize the issuance of an execution thereon, since such judgment was not subject to be enforced in that manner. *Wheeler v. City*

of Blackfoot, 55 Idaho 599, 45 P.2d 298 (1935).

Pavement Expense.

Franchise, roadbed, tracks and like property of street railroads in pavement improvement district were taxable as "abutting, contiguous, tributary or included lands" in proportion to benefits accruing from the improvement. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

Payment of Special Improvement Bonds.

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city's property, where the city never fixed any amount to be paid from general funds for improvements and the item never was in-

cluded within the budget or appropriation bill. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Street Paving.

Expense of paving streets was not an "ordinary and necessary expense," as regards statutory provision limiting expenditures to amount of appropriation. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Time of Receiving Revenue Immaterial.

Fact that time for collection of taxes could be made after commencement of fiscal year different from that in which they were levied did not deprive city of taxes levied for any fiscal year, even though they were collected in a succeeding fiscal year. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

50-1007. Certification and collection of city taxes. — The council of each city not later than [the Thursday prior to] the second Monday in September, as provided in section 63-803(3), Idaho Code, shall certify to the county commissioners of the county, the total amount required from a property tax upon property within the city to raise the amount of money fixed by their budget as previously approved which shall include all special taxes assessed as provided by law. The amount which may be so certified, assessed and collected shall not exceed the maximum levy provided by section 50-235, Idaho Code, to defray its general expenses for either the current or the ensuing fiscal year, together with any special taxes, authorized under the provisions of this act, and such tax as may be authorized by law to be levied for the payment of outstanding bonds and debts. In all sales for delinquent city taxes, if there be other delinquent taxes from the same person, or lien upon the same property, the sale shall be for all the delinquent taxes; and such sales and all sales made under and by virtue of this section or the provisions of law herein referred to shall be of the same validity, and in all respects be deemed and treated as though sales had been made for delinquent state and county taxes exclusively. [1967, ch. 429, § 167, p. 1249; am. 1972, ch. 14, § 1, p. 18; am. 1976, ch. 45, § 7, p. 22; am. 1977, ch. 184, § 1, p. 514; am. 1996, ch. 322, § 51, p. 1029.]

STATUTORY NOTES

Cross References. — Airports, levy, § 21-404.

Authorized to levy taxes, § 50-235.

Capital improvement fund levy, § 50-236.

Collection and payment of property taxes, § 63-901 et seq.

Limitation on property taxes, § 63-1313.

Policemen's retirement fund, § 50-1512.

Recreation and culture, special levy, § 50-303.

Special assessment levies, § 50-1004.

Compiler's Notes. — The bracketed insertion in the first sentence was added by the

compiler to reflect the language of the 2002 amendment of § 63-803(3).

For meaning of "this act", see Compiler's Notes, § 50-102.

Section 2 of S.L. 1977, ch. 184 read, "Cities and counties may issue tax anticipation notes or bonds during the transitional fiscal year 1977, January through September 30, based upon the amount to be certified to the county commissioners prior to the second Monday of September, 1977, and subject to the percentage limitations set forth in section 63-3102, Idaho Code. Each city or county may make

only one (1) certification, either for the current or the ensuing fiscal year.”

Effective Dates. — Section 32 of S. L. 1976, ch. 45 read, “In order to provide an orderly sequence for implementation of the provisions of this act:

“(a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977;

“(b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26

and 30 shall be in full force and effect on and after July 1, 1977; and

“(c) Sections 16, 17, 18, 19, 23, 24, 25, 28 and 29 shall be in full force and effect on and after October 1, 1977.”

Section 3 of S.L. 1977, ch. 184 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Changing levy.

City liable for embezzlement.

Clerk to make collections.

Compensation for collection.

Construction.

Illegality of collection.

Special taxes.

Warrants issued in former years.

Changing Levy.

City council, any time before certifying tax levy for city, could change same. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

City Liable for Embezzlement.

A city which permitted its clerk to collect local improvement assessments in pursuance of statutory authority therefor could not subsequently have questioned the legality of collection by city clerk rather than by county tax collector as defense to action by bondholder for value of special assessment bonds which remained unpaid as result of the city clerk's embezzlement of funds which had been collected for payment of such bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

Clerk to Make Collections.

A clerk of a city had statutory authority to receive and receipt for local improvement assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

Compensation for Collection.

Neither county nor tax collector was authorized to retain any part of taxes collected as compensation for collecting them. *City of Moscow v. Latah County*, 5 Idaho 36, 46 P. 874 (1896).

Construction.

Levy authorized under former similar section could include a levy for the redemption of outstanding warrants for which an appropriation had been made under former section governing the annual appropriation bill.

Standrod v. Case, 24 Idaho 365, 133 P. 651 (1913).

The power to levy the tax was conferred by former section governing general tax levies, while former section governing certification provided for its certification and collection. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

Illegality of Collection.

A city which permitted its clerk to collect local improvement assessments, which were properly paid in part to bondholders by the city treasurer, could not have alleged illegality of collection by clerk, rather than by county tax collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk's embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

Special Taxes.

Former similar section was not repealed by statute authorizing the construction of sewers; and city authorities could certify sewerage taxes to county tax collector to be collected as other taxes. *Denning v. City of Moscow*, 11 Idaho 415, 83 P. 339 (1905).

Warrants Issued in Former Years.

City treasurer could not be compelled to pay warrants issued in former years unless the revenues of the present year were levied to include such indebtedness. *Theiss v. Hunter*, 4 Idaho 788, 45 P. 2 (1896).

50-1008. Collection of special assessments — Certification to tax collector — Widow's exemption. — All special assessments levied in any city to which the provisions of this act are made applicable shall be due and payable to the city treasurer and, if not paid within thirty (30) days after mailing of notification of assessment, shall be declared delinquent and be certified to the tax collector of the county by the city clerk, not later than the first day of August and shall be by said tax collector placed upon the tax roll and collected in the same manner and subject to the same penalties as other city taxes; provided, however, that special assessments certified to the tax collector which are placed on property qualifying for a widow's exemption may be returned to the taxing district from which they originated if the special assessments are not paid within three (3) years. All money received on special assessments shall be held by the city treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever unless to reimburse such city for money expended for such improvement. [1967, ch. 429, § 168, p. 1249; am. 1970, ch. 227, § 1, p. 637; am. 1973, ch. 289, § 1, p. 612.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

ch. 289 provided the act should take effect on and after July 1, 1973.

Effective Dates. — Section 2 of S.L. 1973,

50-1009. Payment by tax collector to city treasurer. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1969, ch. 429, § 169, was repealed by S.L. 1972, ch. 17, § 1.

50-1010. Audit of city finances — Audit to be filed. — It shall be the duty of the council in every city to cause to be made a full and complete audit of the financial statements of such city as required in section 67-450B, Idaho Code.

The council shall be required to include all necessary expenses for carrying out the provisions of this section in its annual budget. [1967, ch. 429, § 170, p. 1249; am. 1977, ch. 71, § 5, p. 134; am. 1982, ch. 42, § 1, p. 68; am. 1987, ch. 13, § 1, p. 18; am. 1993, ch. 327, § 23, p. 1186; am. 1993, ch. 387, § 15, p. 1417.]

STATUTORY NOTES

Amendments. — This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 327, in the former last paragraph of this section substituted "council" for "auditor". However, ch. 387, § 15 deleted the former last paragraph of this section which read: "The council is

hereby required to file one (1) copy of such completed audit report with the legislative auditor within ten (10) days after its delivery by the contracting auditor." Therefore, the former last paragraph has been deleted.

The 1993 amendment, by ch. 387, in the first paragraph deleted "all" following "a full and complete audit of"; substituted "state-

ments” for “transactions” preceding “of such city”; at the end of the first paragraph substituted “as required in section 67-450B, Idaho Code” for “every year; however, lacking more stringent requirements by contract or government law, rule, or regulation, any city whose annual budget for all purposes does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial transactions audited on a biennial basis and may continue biennial auditing cycles in subsequent years provided that the city’s annual budget does not exceed two hundred fifty thousand dollars (\$250,000) during any biennial period.”; deleted the former last two sentences of the first paragraph; and deleted the former last paragraph of this section.

Compiler’s Notes. — Section 41 of S.L. 1993, ch. 327 read: “All employees employed

by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

50-1011. Publication of financial statements — Noncompliance.

— It shall be the duty of the city treasurer to cause to be published quarterly during each fiscal year for at least one (1) insertion in the official newspaper of the city, a full statement of each separate account, fund or appropriation for the year to date, and balances of the debits and credits belonging thereto, indicating salaries, capital outlay and a percentage comparison to the original appropriation. All published financial statements shall include the following: “Citizens are invited to inspect the detailed supporting records of the above financial statements.” Such statement shall be published within thirty (30) days from the end of each quarter, except for [the statement for] the final quarter of the fiscal year which shall be published no later than thirty (30) days from the date of completion of the annual audit. Notwithstanding the above, no one shall be precluded from making this filing prior to the completion of an audit. Failure upon the part of the treasurer of any city to comply with the requirements of this section shall be deemed a misdemeanor. [1967, ch. 429, § 171, p. 1249; am. 1979, ch. 90, § 2, p. 217; am. 1989, ch. 28, § 1, p. 33; am. 1990, ch. 88, § 1, p. 183.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed insertion in the third sentence was added by the compiler to clarify the sentence.

Effective Dates. — Section 3 of S.L. 1979,

ch. 90 declared an emergency. Approved March 20, 1979.

Section 2 of S.L. 1989, ch. 28 declared an emergency. Approved March 20, 1989.

50-1012. Accounting system. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 50-1012, as added by 1974,

ch. 71, § 2, p. 1152, am. 1994, ch. 180, § 91, p. 420, was repealed by S.L. 2003, ch. 32, § 1.

50-1013. Deposit and investment of funds. — The treasurer shall be required to keep all money in his hands belonging to the corporation in such place or places of deposit as shall be provided by ordinance; provided,

however, that the treasurer may be directed and empowered by resolution, to invest any money in his hands in any of the following:

- (a) Revenue bonds issued by the revenue bond act.
- (b) City coupon bonds provided for under section 50-1019, Idaho Code.
- (c) Local improvement district bonds provided for under chapter 17, title 50, Idaho Code.
- (d) Time deposit accounts with public depositories.
- (e) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (f) General obligation bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.
- (g) General obligation bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.
- (h) Notes, bonds, debentures, or other similar obligations issued by the farm credit system or institutions forming a part thereof under the farm credit act of 1971 (12 U.S.C. sections 2001-2259) and all acts of congress amendatory thereof or supplementary thereto; in bonds or debentures of the federal home loan bank board established under the federal home loan bank act (12 U.S.C. sections 1421-1449); in bonds, debentures and other obligations of the federal national mortgage association established under the national housing act (12 U.S.C. sections 1701-1750g) as amended, and in the bonds of any federal home loan bank established under said act and in other obligations of agencies and instrumentalities of the government of the state of Idaho or of the United States.
- (i) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building authority, the Idaho housing authority and the Idaho water resource board, but such investment shall not extend beyond seven (7) days.
- (j) Repurchase agreements and reverse repurchase agreements covered by any legal investment for the state of Idaho or as otherwise allowed by this section, provided that reverse repurchase agreements shall only be used for the purpose of liquidity and not for leverage or speculation.
- (k) Tax anticipation bonds or notes, income and revenue anticipation bonds or notes and registered warrants of the state of Idaho or of taxing districts of the state of Idaho.
- (l) Savings accounts including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.
- (m) Time deposit accounts and other savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the federal savings and loan corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.
- (n) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to

exceed the insurance provided by the national credit union share insurance fund and/or any other authorized share guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(o) Prime banker's acceptances.

(p) Prime commercial paper.

(q) Money market funds, mutual funds, or any other similar funds whose portfolios consist of any allowed investment as specified in this section.

(r) Bonds, debentures or notes of any corporation organized, controlled and operating within the United States which have, at the time of their purchase, an A rating or higher by a commonly known rating service. [1967, ch. 429, § 173, p. 1249; am. 1970, ch. 76, § 1, p. 192; am. 1972, ch. 170, § 1, p. 420; am. 1976, ch. 74, § 1, p. 244; am. 1981, ch. 19, § 1, p. 34; am. 1983, ch. 38, § 1, p. 89; am. 1986, ch. 74, § 3, p. 220; 1986, ch. 88, § 1, p. 257; am. 1987, ch. 162, § 1, p. 318; am. 2001, ch. 42, § 1, p. 78.]

STATUTORY NOTES

Cross References. — Housing authorities and cooperation law, § 50-1901 et seq.

Idaho state building authority act, § 67-6401 et seq.

Idaho water resources board, § 42-1732 et seq.

Revenue bond act, § 50-1027 et seq.

Compiler's Notes. — The words enclosed

in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1970, ch. 76 declared an emergency. Approved March 2, 1970.

Section 2, S.L. 1972, ch. 170 declared an emergency. Approved March 17, 1972.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.

Deposit and investment.

Application.

Former section governing deposit of municipal funds did not apply to the deposit of irrigation district funds. In re Bank of Nampa, Ltd., 29 Idaho 166, 157 P. 1117 (1916).

Deposit and Investment.

Deposit was temporary disposition of money for safekeeping and its temporary nature made it distinguishable from an investment which carries with it greater degree of permanency. City of Pocatello v. Fargo, 41

Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

Objection that ordinance designating bank as depository was not legally passed and void would not be entertained, especially where bank had received deposit and acted in depository capacity. City of Pocatello v. Fargo, 41 Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

Placing of public funds with bank under time certificate of deposit was, in effect, loan to bank on its promissory note. City of Pocatello v. Fargo, 41 Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

50-1013A. Investment of deposits of deferred compensation plans. — A municipal corporation, in administering a deferred compensation plan, shall be governed by the uniform prudent investor act, chapter 5, title 68, Idaho Code. [I.C., § 50-1013A, as added by 1989, ch. 249, § 1, p. 599; am. 1997, ch. 14, § 4, p. 14.]

50-1014. Transfer of funds. — The city council of the cities may transfer an unexpended balance in one fund to the credit of another fund. [1967, ch. 429, § 174, p. 1249.]

50-1015. Disposition of license fees and fines. — All license fees of every character and all fines and penalties recovered under the provisions of any city ordinance shall be paid into the city treasury for the use and benefit of the general fund, except that the council may transfer and distribute the moneys or revenue, in whole or in part, received and recovered from fines, penalties, forfeitures and costs for enforcing and prosecuting violations of ordinances regulating traffic (pedestrian, motor vehicle or bicycle), including but not limited to parking, moving and nonmoving violations of such traffic regulations to the fund or funds established by ordinance dedicated for the purpose of paying the indebtedness (principal and interest) incurred for the acquisition and construction of off-street parking facilities, including land, buildings, structures, equipment and appurtenances necessary for the parking of motor vehicles. The council may also by ordinance transfer and distribute any portion of said fines, penalties, forfeitures and costs, after deducting that amount required to pay an indebtedness (principal and interest) incurred for acquiring and constructing said off-street parking facilities, for the purpose of maintaining and operating said off-street parking facilities. [1967, ch. 429, § 175, p. 1249; am. 1976, ch. 164, § 1, p. 594.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

50-1015A. Disposition of parking fees and fines. — All moneys collected for the regulation of parking on city streets, whether collected through city parking meters or by the city clerk, shall not be subject to disposition in the same manner as moneys collected for violations of city ordinances, but shall be placed in the general fund of the city. [1969, ch. 120, § 1, p. 380.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1969, ch. 120 provided that the act should be effective at 12:01 a.m. on January 11, 1971.

50-1016. Deductions from wages. — Any city may deduct, upon written approval of the individual employee, sums certain from said employee's salary or wages for the purpose of paying said sums for premiums on group life, health, accident, disability, hospital and surgical insurance, or any other purposes approved by the city council. Any city may pay all or any part of such deductions as approved by the council.

Any city may adopt a city retirement and pension plan for the benefit of its employees and for that purpose may deduct, upon written approval of the individual employee, sums certain from said employee's wages as a contribution to said plan and any city may pay all or any part of such premiums as approved by the council and may make such other contributions as may be required to make such plan actuarially sound. Such plan may be administered by the employer or by a third party organization selected through a competitive selection process. Further, the employer may cooperate with other city or county employers for joint administration of the plan.

STATUTORY NOTES

Cross References. — Policemen's retirement fund, § 50-1501 et seq.

50-1017. Presentation of claims. — All claims against the city shall be approved by the city council prior to the payment of such claims and the city council shall establish and maintain an adequate and reasonable system of internal accounting controls. No costs shall be recovered against such city in any action brought against it for any unliquidated claim which has not been presented to the city council for payment, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed with interest due. [1967, ch. 429, § 177, p. 1249; am. 1972, ch. 107, § 1, p. 221; am. 1977, ch. 240, § 1, p. 717; am. 2003, ch. 69, § 1, p. 235.]

STATUTORY NOTES

Cross References. — Damage claims, manner of presentation and payment, § 50-219.

Effective Dates. — Section 3 of S.L. 2003, ch. 69 declared an emergency. Approved March 13, 2003.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Suit against councilmen.
Torts.

Suit Against Councilmen.

Plaintiff who sustained personal injuries as the result of a dead end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. Lemmon

v. Clayton, 128 F. Supp. 771 (D. Idaho 1955).

Torts.

Claims for torts did not come within former similar section. Miller v. Mullan, 17 Idaho 28, 104 P. 660 (1909).

RESEARCH REFERENCES

A.L.R. — Modern status of the law as to validity of statutes or ordinances requiring

notice of tort claim against local governmental entity. 59 A.L.R.3d 93.

50-1018. Payment of claims. — Upon approval of claims by the council, payment may be ordered by warrant or by electronic means, signed by or authorized by the mayor and clerk or by check or by electronic means signed by or authorized by the mayor and treasurer. The order for their payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill. In the absence of sufficient funds, the council may, by resolution, order payment of claims by money borrowed by either:

- (1) Registered warrants as provided in section 31-2125, Idaho Code, or
- (2) By issuing its tax [revenue] anticipation notes as provided in section 63-3102, Idaho Code, or
- (3) Short term borrowing not involved with the tax effort in anticipation of approved federal or state grants. [1967, ch. 429, § 178, p. 1249; am. 1976, ch. 48, § 1, p. 147; am. 2003, ch. 69, § 2, p. 235.]

STATUTORY NOTES

Cross References. — Payment of invalid or stale claims prohibited, § 50-218.

Compiler's Notes. — The bracketed insertion in paragraph (2) was added by the compiler to reflect the language of the 1988 amendment of § 63-3102.

Effective Dates. — Section 3 of S.L. 2003, ch. 69 declared an emergency. Approved March 13, 2003.

50-1019. Purposes for which bonds may be issued — Limitation on amount. — Every city incorporated under the laws of the territory of Idaho or of the state of Idaho shall have power and authority to issue city coupon bonds not to exceed in aggregate at any time, ten per cent (10%) of the assessed full cash valuation [two per cent (2%) of the market value for assessment purposes] of the real and personal property in said city, according to the assessment of the preceding year, for any or all of the purposes specified [in subsections 1 through 10 of this section,] as follows:

1. To provide for constructing, laying out, grading, curbing, draining, sidewalking or otherwise improving streets, alleys, intersections, crossings and crosswalks; and to construct, or aid in the construction of bridges across streams within or contiguous to, or within one (1) mile of the exterior limits of, such city.

2. To provide for the funding, refunding, purchase and redemption of the outstanding indebtedness, bonds may be issued under this section for such purposes, without submission of the question of issuance of such bonds to the electors of the city, when the same can be done to the profit and benefit of such city without incurring any additional liability.

3. To provide for the establishment of hospitals and cemeteries, either within or without the corporate limits of such city.

4. To provide for the purchase, improvement and equipment of lands and buildings thereon, for public parks, monuments, recreation facilities and zoos, either within or without the corporate limits of such city.

5. To provide for the purchase, erection, construction and furnishing of city public libraries.

6. To provide for the establishment of a fire department by the purchase of building sites, buildings, and suitable equipment and apparatus necessary to provide fire protection.

7. To provide for the purchase, acquisition, improvement and equipment of aviation facilities either wholly or partly within or without the corporate limits of such city, or wholly or partly within or without the state of Idaho.

8. To provide for flood control by acquisition and purchase of right-of-way and to establish, alter, enlarge, improve, reconstruct and change the channels of watercourses or any stream, river or body of water within or without the corporate limits of the city.

9. To provide for the acquisition, construction, remodeling, improvement or otherwise, of buildings for public use, together with all necessary appurtenant facilities and equipment, including all necessary land for building sites, either within or without the corporate limits of such city.

10. To provide for the purchase, acquisition, erection and construction of off-street parking sites, structures, buildings, facilities, equipment and appurtenances.

11. To provide for the purchase, acquisition, improvement and equipment of transit systems.

All bonds of any municipality which were issued, sold and delivered to the purchasers thereof prior to April 12, 1967, for the purpose of providing for the building, laying, construction, equipment, extension, enlargement, alteration, improvement or maintenance of storm sewers or sanitary sewerage systems, shall be excluded when determining the aggregate amount of bonds of any city issued hereunder which are outstanding for the purpose of computing the debt limitation provided for in the first paragraph of this section. [1967, ch. 429, § 179, p. 1249; am. 1968 (2nd E.S.), ch. 7, § 1, p. 15; am. 1970, ch. 130, § 1, p. 305; am. 1976, ch. 163, § 1, p. 592; am. 1980, ch. 54, § 1, p. 111; am. 1980, ch. 350, § 22, p. 887.]

STATUTORY NOTES

Cross References. — Power to issue bonds, § 50-237.

Amendments. — This section was amended by two 1980 acts, chapters 54 and 350, which made different changes in the first paragraph of the section. Accordingly, that paragraph reflects the conflicting amend-

ments with the varying language of S.L. 1980, ch. 350 in brackets. In addition, S.L. 1980, ch. 54 added subsection (11).

Effective Dates. — Section 2 of S.L. 1968 (2nd E.S.), ch. 7 declared an emergency. Approved February 12, 1968.

JUDICIAL DECISIONS

ANALYSIS

Attempted evasion.

Charter provisions.

City hall.

Distinguished from local improvements.

Ditches.

Equitable relief on void bonds.

Funding and refunding bonds.

Nature of power to issue bonds.

Parks.

Statutory provisions incorporated in bond.

Attempted Evasion.

City could not evade provisions of former similar section limiting bonded indebtedness to certain percentage of real estate valuation for preceding year, by voting bonds for partial payment on a contract, and making no legal provision for balance due upon said contract. *Woodward v. City of Grangeville*, 13 Idaho 652, 92 P. 840 (1907).

A city could not pledge its revenues from any source whatever without creating an indebtedness subject to the restriction of Const., Art. 8, § 3. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

Former sections dealing with municipal bonds did not provide for the issuance of municipal bonds for the construction and operation of a system for the distribution of gas and the creation of the cooperative in question, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance, were all parts of a plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

Charter Provisions.

Act of legislature amending charter of city, providing that fifteen per cent of entire property of city, both personal and real, could be considered as basis for issuing bonds for municipal improvements, wherein it was provided that bonds should not be issued in excess of fifteen per cent of the taxable property as shown by the assessment of the preceding year, was a local or special law, but did not conflict with state constitution. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

City Hall.

Issuance of bonds by City of Gooding for city hall was held proper. *Thomas v. City of Gooding*, 27 Idaho 624, 149 P. 1064 (1915).

Distinguished From Local Improvements.

Where streets were paved and assessments were made against abutting property, improvement district bonds could be issued without submitting question of issuing bonds to electors or taxpayers of either improvement district or city, but where cost and expenses were to be paid by city, and bonds were to be issued for purpose of raising revenue to pay same, then such question was required to be submitted to electors and taxpayers of city.

Byrns v. City of Moscow, 21 Idaho 398, 121 P. 1034 (1912).

Ditches.

In exercising its right to grade its streets, city could, if necessary, have removed ditches and required their reconstruction by pipelines laid beneath surface by company possessing franchise and easement for such ditches. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).

Equitable Relief on Void Bonds.

In an action to cancel bonds and interest coupons, which had been adjudged to have been issued in violation of constitutional and statutory debt limitations, the holder of such bonds was not entitled to have equity direct an accounting and fix general debt liability against a village, since the bonds were void and not voidable, and equity could not and would not afford relief in violation of constitutional prohibitions. *Village of Heyburn v. Security Sav. & Trust Co.*, 55 Idaho 732, 49 P.2d 258 (1935).

Funding and Refunding Bonds.

Where the bondholder was willing to accept payment in advance of maturity, former similar section clearly implied the authority for the village to issue and sell refunding revenue bonds, to provide the means of payment and redemption, before maturity, of the outstanding water and sewer revenue bonds, when such could be done without increasing the outstanding indebtedness and with a savings to those served by the work. Such bonds could be authorized, issued and sold either by ordinance or resolution and without a vote of the electors of the village. *Adams v. Pritchard*, 88 Idaho 325, 399 P.2d 252 (1965).

Nature of Power to Issue Bonds.

Power of municipality to issue bonds for improvement of light and power plant was grant of authority from state and was required to be construed strictly against grantee. *Bradbury v. City of Idaho Falls*, 32 Idaho 28, 177 P. 388 (1918).

Parks.

Grant to municipality of power to maintain park enjoined no absolute duty to do so. Maintenance of parks was primarily a private as opposed to a governmental function. *Boise Dev. Co. v. Boise City*, 30 Idaho 675, 167 P. 1032 (1917).

Statutory Provisions Incorporated in Bond.

Provisions of former similar section referred to in ordinance and bonds were to be read into, and made part of, bonds, and they become binding on purchasers. *Neighbors of Woodcraft v. Rupert*, 51 Idaho 215, 4 P.2d 360 (1931).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, § 92 et seq.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1645 et seq.

50-1020. Waterworks — Light and power plants — Sewerage systems. — Every city incorporated under the laws of the territory of Idaho or of the state of Idaho shall have power and authority to issue city coupon bonds in a sufficient amount to acquire, by purchase or otherwise, waterworks plants and water supply, light and power plants, storm sewers and sanitary sewerage systems, and to construct, enlarge, extend, repair, alter and improve such plants or systems notwithstanding the percentage limitation of the previous section. "Waterworks plants and water supply" include by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

The amount for which bonds may be issued for purposes as in this section provided shall be determined by the council and stated in the ordinance therefor, and shall be authorized in such amount as the city council shall deem necessary by one or more bond elections, called as provided in section 50-1026, Idaho Code, or amendatory act. [1967, ch. 429, § 180, p. 1249; am. 1970, ch. 130, § 2, p. 305; am. 1979, ch. 304, § 2, p. 825.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Power plant bond issues.
Proprietary capacity.
Village water supply.

Power Plant Bond Issues.

Proceeding of a city, relating to a municipal electric power generating plant and distribution system bond issue election and increasing liability of the city, was void under the Idaho statute and constitution, where the plan involved debt exceeding the amount authorized by ordinance and the voters of the city, and, therefore, the court would not modify its injunction restraining the city from entering into a contract with the federal emergency administration of public works for the purpose of providing funds for the construction of the plant and system. *Washington Water Power Co. v. City of Coeur d'Alene*, 25 F. Supp. 795 (D. Idaho 1938).

Proprietary Capacity.

A municipal corporation in the ownership, maintenance and operation of a municipal water system supplying water to its inhabitants for pay, acted in a proprietary, not in a governmental, capacity. *Gilbert v. Bancroft*, 80 Idaho 186, 327 P.2d 378 (1958).

Village Water Supply.

Village had power and authority to contract for supply of water. *Jack v. Village of Grangeville*, 9 Idaho 291, 74 P. 969 (1903); *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

50-1021. Previous issues validated. — All bonds authorized at any city election heretofore held, as provided in said section 50-1026[, Idaho Code], or acts amendatory thereof, for the purpose of acquiring adequate plants for such city by purchase or otherwise, and by enlarging, extending[, repairing, altering or improving any existing city water, light and power or

sewage [sewerage] systems, shall be deemed to have been authorized for all or any of the purposes for which such bonds may hereafter be issued under this section, and all such bonds which at such election have been heretofore authorized, when issued and sold, are hereby declared to be legal and binding obligations of such city, provided all requirements of law have been fully complied with, and the same are hereby declared to be of like force and effect as if the city, at the time such election was called and held, had possessed all the power herein granted and conferred. [1967, ch. 429, § 181, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to clarify the sentence.

50-1022. Joint services. — In addition to the authority contained in the foregoing sections and in sections 67-2326 through and including 67-2333, Idaho Code, it shall be lawful for two (2) or more cities, so situated with reference to each other that it is practicable and convenient to furnish the said inhabitants thereof with water, power or sewerage from a single plant and system, to join in the construction or purchase of such plant or system upon a substantial compliance with the provisions of sections 50-1022 to 50-1025, Idaho Code, and not otherwise. [1967, ch. 429, § 182, p. 1249; am. 1971, ch. 10, § 1, p. 22.]

50-1023. Joint services — Agreement on apportionment. — Whenever two (2) or more cities desire jointly to construct water, power or sewage [sewerage] systems, it shall be necessary for the councils to agree among themselves as to the kind and character of construction of the said plant and system, the amount of service to which each city shall be entitled, the approximate cost of such systems and the proportionate part thereof which shall be borne by each city, which proportionate part shall be as nearly just and equitable as possible, and shall be determined in such manner as may be agreeable to all concerned. [1967, ch. 429, § 183, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "sewerage" was inserted by the compiler, as the probable intended word.

50-1024. Joint services — Bond election in each city. — Whenever the proportionate share of the cost of such construction or purchase to be borne by each city has been determined, an election shall be held in each city as now provided by law in similar cases, for the purpose of determining whether or not coupon bonds shall be issued by such city in an amount equal to its proportionate share of the cost of such construction or purchase. [1967, ch. 429, § 184, p. 1249.]

50-1025. Joint services — Committee for construction or purchase. — If, in each of said cities the question of issuing bonds for the construction or purchase of such systems, plants and equipment shall have been favorably decided by the electors of such city, said bonds shall be issued as now provided by law, and the city councils of the cities in question shall meet, and organize and appoint a committee to be composed of their own members, upon which each of said cities shall have equal representation, for the purpose of constructing such plants and systems or for purchasing the same if such is available. The said committee shall have all necessary power to make contracts for the construction or purchase of such plants and systems and to bind the said cities as herein contemplated. [1967, ch. 429, § 185, p. 1249.]

50-1026. City bonds — Ordinance — Election. [Effective until January 1, 2011.] — Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.

The ordinance shall also provide for holding an election, of which thirty (30) days['] notice shall be given in the official newspaper of the city. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No.," and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No." If at such election, held as provided in this chapter, two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho. [1967, ch. 429, § 186, p. 1249; am. 1971, ch. 25, § 7, p. 61.]

STATUTORY NOTES

Cross References. — City elections, § 50-401 et seq.

Municipal bond law, § 57-201 et seq.

Compiler's Notes. — For this section as effective January 1, 2011, see the following

section, also numbered § 50-1026.

The bracketed insertion in the first sentence of the second paragraph was added by the compiler for clarity.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Projects financed under section.

Qualification of voters.

Constitutionality.

Two thirds affirmative vote requirement of this section and Art. VIII, § 3, Idaho Constitution, as applied to issuance by city of general obligation bonds to finance airport terminal and municipal swimming pool, was not offensive to Equal Protection Clause, Fourteenth Amendment, U.S. Constitution, as violative of principle of one man, one vote. *Bogert v. Kinzer*, 93 Idaho 515, 465 P.2d 639 (1970), appeal dismissed, 403 U.S. 914, 91 S. Ct. 2224, 29 L. Ed. 2d 691 (1971).

Projects Financed Under Section.

In a ground lease and power sales contract relating to the construction of a hydroelectric project, to be financed by the city under this section and § 50-1026A, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either Idaho Const., Art. VIII, § 4 or Art. XII, § 4,

prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale for adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

Qualification of Voters.

A compelling state interest in limiting the franchise in special elections to approve general obligation bonds to electors who are real property taxpayers prevails over *Phoenix v. Kolodziejski* which holds that property qualifications are invalid insofar as the franchise to vote in general obligation bond elections are concerned. *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971). See *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Power plant bonds.

Qualifications of voters.

Refunding bonds.

Statement of purpose in ordinance.

Submission of several propositions.

Sufficiency of ballot.

Sufficiency of notice.

Test of sufficiency of notice or ordinance.

Power Plant Bonds.

Proceeding of a city, relating to a municipal electric power generating plant and distribution system bond issue election, and increasing liability of the city, was void under the Idaho statute and constitution, where the plan involved debt exceeding the amount authorized by ordinance and the voters of the city; therefore, the court would not modify its injunction restraining the city from entering into a contract with the federal emergency administration of public works for the purpose of providing funds for the construction of the plant and system. *Washington Water Power Co. v. City of Coeur d'Alene*, 25 F. Supp. 795 (D. Idaho 1938).

Qualifications of Voters.

Provision of former similar section prescribing qualification of voter at municipal bond election did not apply to one who had paid registration fee on automobile but owned no other taxable property. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Purpose of former similar section was to restrict issuance of bonds to such issues as should be consented to by at least two thirds of those who were to be primarily affected by

burden thereby imposed. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Resident of municipality owning no taxable property other than automobile on which he had paid registration fee was not qualified to vote at municipal bond election. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Refunding Bonds.

Provisions of former similar section were not intended to apply to issuance of refunding bonds of municipalities when issuance of such bonds would not create an additional indebtedness or liability of municipality. *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722 (1910).

Statement of Purpose in Ordinance.

Provision of former similar section which required bonding ordinance to specify purpose of issuing proposed bonds was not complied with by an ordinance stating purpose of bonds to be "to fund the outstanding indebtedness of said city." *Coffin v. Richards*, 6 Idaho 741, 59 P. 562 (1899).

Submission of Several Propositions.

Former similar section did not require a separate election ordinance for each proposed

issue of municipal bonds. Different propositions for different objects may have been embodied in one ordinance, provided that each proposition was so clearly and distinctly submitted to electors of municipality that they could adopt or reject it, independently of others. *Platt v. City of Payette*, 19 Idaho 470, 114 P. 25 (1911).

Proposition could include but one purpose. *Corker v. Village of Mt. Home*, 20 Idaho 32, 116 P. 108 (1911).

Several distinct and independent purposes or propositions may be incorporated in one ordinance submitting question of issuing municipal bonds by a municipal corporation, providing such purposes were separately stated and voters at municipal election were given an opportunity to express their will upon each purpose or question as a separate and independent proposition or question. *Ostrander v. City of Salmon*, 20 Idaho 153, 117 P. 692 (1911).

Where, however, propositions to be determined were distinct and different propositions and were to be determined under different provisions of statute, there should be a separate ordinance with reference to each

proposition. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Sufficiency of Ballot.

Ballot in exact language of former similar section was sufficient. *Brown v. Village of Grangeville*, 8 Idaho 784, 71 P. 151 (1903).

Sufficiency of Notice.

Where mayor published proclamation for period of more than thirty days in a newspaper published in city, giving time and place when an election would be held to vote upon a proposition to issue bonds for municipal improvement, there was a sufficient compliance with former similar section. *Sommercamp v. Kelly*, 8 Idaho 712, 71 P. 147 (1902).

Test of Sufficiency of Notice or Ordinance.

Test of sufficiency or validity of a notice or ordinance in this respect was whether voters at general election held pursuant to ordinance and notice could be reasonably presumed from notice itself and ordinance to have understood the question submitted to them. *Corker v. Village of Mt. Home*, 20 Idaho 32, 116 P. 108 (1911).

50-1026. City bonds — Ordinance — Election. [Effective January 1, 2011.] — Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.

The ordinance shall also provide the date for holding an election that is in accordance with the dates authorized in section 50-405, Idaho Code, of which notice shall be given in the official newspaper of the city by the county clerk in accordance with election law in title 34, Idaho Code. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No.," and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No." If at such election, held as provided in this chapter, two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho. [1967, ch. 429, § 186, p. 1249; am. 1971, ch. 25, § 7, p. 61; am. 2009, ch. 341, § 127, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first sentence in the last paragraph, inserted “the date” and “that is in accordance with the dates authorized in section 50-405, Idaho Code,” deleted “thirty (30) days” preceding “notice,” and added “by the county clerk in accordance with election law in title 34, Idaho Code.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-1026.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-1026A. City bonds — Pledge of revenues. — (a) In the ordinance required in section 50-1026, Idaho Code, providing for the issuance of bonds of a city to be issued to acquire, improve, construct or extend a revenue producing system or facility to be owned and operated by the city, the city council may pledge, as an additional source of payment of such bonds, all or any part of the revenues derived or to be derived from rates, fees, tolls, or charges imposed for the services, facilities, or commodities furnished by the revenue producing system or facility to be so acquired, improved or extended.

(b) The notice of the election on bonds provided for in section 50-1026, Idaho Code, shall describe any pledge of revenues made pursuant to this section. The proposition appearing on the ballot provided for in section 50-1026, Idaho Code, shall indicate that the bonds are to be additionally secured by a pledge of revenues of designated revenue producing systems or facilities owned and operated by the city.

(c) The city council of a city may, in the ordinance required in section 50-1026, Idaho Code, providing for the issuance of bonds to which revenues have been pledged as provided in this section, covenant to prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities, or commodities furnished by any revenue producing system or facility owned and operated by the city, all or a portion of the revenues of which have been pledged to bonds of the city as provided in this section, and may covenant to prescribe and collect such rates, fees, tolls or charges as will produce revenues sufficient, in addition to any other requirements of law, to pay all or a portion of the maturing principal of an interest on the bonds to which such revenues have been pledged.

(d) The provisions of section 57-214, Idaho Code, to the contrary notwithstanding, bonds of a city to which revenues have been pledged as provided in this section, if issued to provide electric improvements or facilities, may be sold in such manner and at such price as the city council may in its discretion determine advisable, provided that such bonds may not be issued to acquire generation, transmission, or distribution facilities owned by other utilities without the consent of the utility owning the improvement or facility. Bonds of a city to which revenues have been pledged as provided in this section may be issued in coupon or registered form. The city council may provide for the use of a portion of the proceeds of sale of bonds to which revenues have been pledged as provided in this section to pay interest on the bonds during the period to be covered by the construction of the facility or improvement for which the bonds are to be issued and to establish such reserves as the city council shall deem to be necessary.

(e) The provisions of section 50-1041, Idaho Code, shall not apply to bonds of a city to which revenues have been pledged as provided in this section. Such bonds shall be deemed not to have been issued under the revenue bond act. [I.C., § 50-1026A, as added by 1981, ch. 218, § 1, p. 405; am. 1982, ch. 366, § 1, p. 916.]

STATUTORY NOTES

Cross References. — Revenue Bond Act, § 50-1027 et seq.

Compiler's Notes. — Section 2 of S.L. 1981, ch. 218 read: "If any one or more sentences, clauses, phrases, provisions or sections of this act, or the application thereof to any set of circumstances, shall be held by final judgment of any court of competent jurisdiction to be invalid, the remaining sentences, clauses, phrases, provisions and sections

hereof and the application of this act to other sets of circumstances shall nevertheless continue to be valid and effective, the legislature hereby declaring that all sentences, clauses, phrases, provisions and sections of this act are severable."

Effective Dates. — Section 3 of S.L. 1981, ch. 218 declared an emergency. Approved April 6, 1981.

JUDICIAL DECISIONS

Contracts Financed Under Section.

In a ground lease and power sales contract relating to the construction of a hydroelectric project to be financed by the city under this section and § 50-1026, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either

Const., Art. VIII, § 4 or Art. XII, § 4, prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale for adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

50-1027. Revenue bonds — Short title. — The following fifteen (15) sections may be cited as the Revenue Bond Act. [1967, ch. 429, § 187, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The section defines the revenue bond act as the "following fifteen (15) sections" of S.L. 1967, ch. 429. As codified,

those sections are §§ 50-1028 to 50-1035 and 50-1036 to 50-1042. Section 50-1035A was added by S.L. 1991, ch. 300, § 3.

JUDICIAL DECISIONS

ANALYSIS

Rates, fees and charges.

—Connection fees.

Rates, Fees and Charges.

When the rates, fees and charges of water and sewerage system conform to the statutory scheme set forth in the Idaho revenue bond act or are imposed pursuant to a valid police power, the charges are not construed as taxes. However, if the rates, fees and charges are imposed primarily for revenue raising purposes they are, in essence, disguised taxes

and subject to legislative approval and authority. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because § 50-1033(b) allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city's wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of*

Pocatello, 127 Idaho 198, 899 P.2d 411 (1995).

—Connection Fees.

The Idaho revenue bond act authorizes the collection of sewer connection fees, and it is clear that so long as the fees collected pursuant to the Idaho revenue bond act are allocated and budgeted in conformity with that

act they will not be construed as taxes requiring approval of the electorate. However, if fees are collected under the disguise of the act and allocated and spent otherwise, then the fees are primarily revenue raising and will be construed as taxes. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

DECISIONS UNDER PRIOR LAW

Attempted Evasion.

Former sections, containing the revenue bond act, did not authorize issuance of bonds for the construction and operation of a system for the distribution of gas and the creation of the cooperative in question, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of

Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance, were all parts of a plan and design provided to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes and to exercise powers not granted to a municipality. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

50-1028. Grant of authority. — Any city acquiring, constructing, reconstructing, improving, bettering or extending any works pursuant to this act, shall manage such works in the most efficient manner consistent with sound economy and public advantage, to the end that the services of such works shall be furnished at the lowest possible cost. No city shall operate any works primarily as a source of revenue to the city, but shall operate all such works for the use and benefit of those served by such works and for the promotion of the welfare and for the improvement of the health, safety, comfort and convenience of the inhabitants of the city. [1967, ch. 429, § 188, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For meaning of "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

Fee and Rate System.

A connection fee may be imposed by the police power or other statutory power and will be upheld by the courts if it is not unreasonable and not arbitrarily imposed. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

It is not the province of the court to determine how a municipality should allocate its fee and rate system. So long as the fees and rates charged conform to the statutory requirements and are reasonable, the fees, rates and charges will be upheld; the fees,

rates and charges imposed by the municipality must be reasonable and produce sufficient revenue to support the system at the lowest possible cost as required by the Idaho revenue bond act. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because § 50-1033(b) allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city's wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Combination of systems.
Refunding bonds.

Combination of Systems.

Village was entitled to combine its water system and sewerage system and issue water and sewer revenue bonds with a pledge of the net revenue of both as sole security even though water system presently existed and sewerage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality.

Schmidt v. Village of Kimberly, 74 Idaho 48, 256 P.2d 515 (1953).

Refunding Bonds.

The savings to users by means of refunding the outstanding bonds at a lower rate of interest was in harmony with, and in furtherance of, the legislative policy declared in former similar section. Adams v. Pritchard, 88 Idaho 325, 399 P.2d 252 (1965).

50-1029. Definitions. — For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems, drainage systems, sewerage systems, recreation facilities, off-street parking facilities, air-navigation facilities or any of them as herein defined;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes. The term "domestic uses or purposes" includes by way of example but not by way of limitation the use of water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term "off-street parking" shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term "airport facilities and air-navigation facilities" shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such city, or wholly or partly within or without the state of Idaho;

(f) The term "rehabilitate existing electrical generating facilities" shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators,

dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plants, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances.

(g) The term "drainage system" shall include ditches, channels, creeks, ponds, intake structures, diversion structures, levies, storm sewers, pump stations, force mains, buildings, easements, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, treatment and disposal of any surface water, nuisance ground or subsurface water or stormwater of any city. [1967, ch. 429, § 189, p. 1249; am. 1969, ch. 193, § 1, p. 564; am. 1977, ch. 50, § 1, p. 91; am. 1978, ch. 176, § 1, p. 402; am. 1979, ch. 304, § 3, p. 825; am. 1991, ch. 311, § 1, p. 818.]

STATUTORY NOTES

Compiler's Notes. — Section 1 of S.L. 1978, ch. 330 purported to amend this section. Section 3 of that act provided that the act should take effect when the amendment to Article VIII, § 3 of the Idaho Constitution which was proposed by the Second Regular Session of the Forty-Fourth Idaho Legislature was ratified. However, the proposed constitu-

tional amendment was defeated and, accordingly, the amendment to this section never took effect.

For words "this act", see Compiler's Notes, § 50-102.

Effective Dates. — Section 2 of S.L. 1969, ch. 193 provided that the act should be in full force and effect on and after July 1, 1969.

50-1030. Powers. — In addition to the powers which it may now have, any city shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the city, or partially within or partially without the city, or within any part of the city, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights-of-way, contract rights, leases, franchises, approaches, dams and reservoirs; to sell excess or surplus water under such terms as are in compliance with section 42-222, Idaho Code, and deemed advisable by the city; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the city, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as needed by such city for the purposes set forth in section 50-1028, Idaho Code, as determined by the city; that the city shall not be made subject to any debt or liability thereby; and the city shall not pledge any of its faith or credit in aid to such lessee;

(b) To rehabilitate existing electric generating facilities;

(c) To exercise the right of eminent domain for any of the works, purposes or uses provided by this act, in like manner and to the same extent as provided in section 7-720, Idaho Code;

(d) To operate and maintain any works or rehabilitated existing electrical generating facilities within or without the boundaries of the city, or partially within or without the boundaries of the city, or within any part of the city;

(e) To issue its revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works, or to finance, in whole or in part, the cost of the rehabilitation of existing electrical generating facilities;

(f) To prescribe and collect rates, fees, tolls, or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, or by such rehabilitated existing electrical generating facilities, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges;

(g) To pledge an amount of revenue from such works or rehabilitated existing electrical generating facilities (including improvement, betterment or extensions thereto, thereafter constructed or acquired) sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to sections 50-1027 through 50-1042, Idaho Code, and the costs of any bond reserve funds or working capital deemed necessary in connection with the bond issue;

(h) In the procurement of off-street parking sites, facilities, equipment and appurtenances, any city shall have power, in addition to those heretofore conferred, to pledge the net revenues to be derived from on-street parking facilities not otherwise pledged, to be combined with the rates, fees, tolls and charges to be derived from the operation of off-street parking facilities, after the payment of all operative and maintenance costs, to the payment of revenue bonds and interest thereon issued under the authority of the revenue bond act;

(i) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the revenue bond act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancellation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included with the refunding bonds, as part of a single issue, or in combination in one or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the revenue bond act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the revenue bond

act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the proceedings authorizing such bonds. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the revenue bond act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancellation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings. [1967, ch. 429, § 190, p. 1249; am. 1971, ch. 112, § 1, p. 383; am. 1977, ch. 50, § 2, p. 91; am. 1987, ch. 206, § 1, p. 433.]

STATUTORY NOTES

Cross References. — Revenue bond act, § 50-1027 et seq.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-102.

Effective Dates. — Section 2 of S.L. 1971, ch. 112 declared an emergency. Approved March 15, 1971.

JUDICIAL DECISIONS

ANALYSIS

Liability for charges incurred by tenants.

Rates, fees and charges.

—Method of determining.

Liability for Charges Incurred by Tenants.

A city did not have implied power to collect from a property owner for charges incurred by tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

Rates, Fees and Charges.

Where city based connection fees charged users of water and sewer system on formula termed "equity buy-in" and city annually was required to revalue the fees pursuant to the formula and all revenue from the fees was placed in a separate account and used only for replacement of existing facilities and equipment, no moneys were placed in the general operating funds of the city and none was used

for expansion or improvement of the existing system, it was not necessary that a municipality have an election such as prescribed in Const., Art. VIII, § 3 prior to changing the rates, fees or charges imposed in establishing the cost of public works services such as sewer or water connection fees. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

—Method of Determining.

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the

value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact the the connection fee may be higher in such city than in other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; thus, where ordinance specifically states that its intent is to "recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems

and any extentions thereof," there is nothing in the ordinance that is not authorized by the Idaho revenue bond act and court found no evidence in the record that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Cited in: *Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Acquisition of land.
Combination of systems.
Constitutionality.
Disconnection charge.
Removal of water company's pipes.
Sewage disposal.

Acquisition of Land.

A village was entitled to acquire land without the village for the purpose of constructing a sewage disposal and treatment plant. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Combination of Systems.

Village was entitled to combine its water system and sewerage systems and issue water and sewer revenue bonds with a pledge of the net revenue of both as sole security even though water system presently existed and sewerage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Constitutionality.

Provision of ordinance and former similar section granting authority to municipality to discontinue service to any one who failed to pay charges for water and sewer service is constitutional. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Disconnection Charge.

Provisions in ordinance for charge of \$1.00 for disconnection of service from municipal

water and sewerage systems on default in payment and charge of \$1.00 for reconnection were valid since specific charges covered only the cost of disconnection and reconnection. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Removal of Water Company's Pipes.

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to regulation by the commission, since municipalities retain the right to control and maintain its streets and alleys. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

Sewage Disposal.

As a municipal corporation, the village possessed legislatively delegated power to construct, operate and maintain sewage disposal facilities and to issue its bonds for the purpose of acquiring and constructing sewage treatment and disposal plants, together with lands and appurtenances. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

A sewage disposal facility, legal in its inception, was not a nuisance per se, and its location and the manner of its operation would determine whether it was a nuisance in fact. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

50-1031. Supervision of projects. — The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works or rehabilitated existing electrical generating facilities under the provisions of this act, and the collection of revenues therefrom for the service rendered

thereby, shall be under the supervision and control of the governing body of the city. [1967, ch. 429, § 191, p. 1249; am. 1977, ch. 50, § 3, p. 91.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 50-102.

50-1032. Projects to be self-supporting. — The council of a city issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by such works or rehabilitated existing electrical generating facilities, and shall revise such rates, fees, tolls or charges from time to time, to provide that all such works or rehabilitated existing electrical generating facilities shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient, (a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such works or rehabilitated existing electrical generating facilities, including reserves therefor. [1967, ch. 429, § 192, p. 1249; am. 1977, ch. 50, § 4, p. 91.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

ANALYSIS

Water and sewer system.
— Rates, fees and charges.

Water and Sewer System.

— Rates, Fees and Charges.

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact that the connection fee may be higher in such city than in other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; since the ordinance specifically states that its intent is to “recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems

and any extensions thereof,” there was nothing in the ordinance that was not authorized by the Idaho revenue bond act and court found no evidence in the record that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho revenue bond act, the fees are not collected for general revenue raising purposes and are, therefore, not taxes requiring approval of the electorate; under these circumstances a municipality may collect such fees,

rates or charges pursuant to the power granted in the Idaho revenue bond act to pay for maintenance, depreciation and replace-

ment of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

DECISIONS UNDER PRIOR LAW

Disconnection Charge.

Provisions in ordinance for charge of \$1.00 for disconnection of service from municipal water and sewage systems on default in payment and charge of \$1.00 for reconnection

were valid since specific charges covered only the cost of disconnection and reconnection. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

50-1033. Use of projects — Revenue. — Any city issuing bonds under sections 50-1027 through 50-1042, Idaho Code, for the acquisition, construction, reconstruction, improvement, betterment or extension of any works or to rehabilitate existing electrical generating facilities, shall have the right to appropriate, apply or expend the revenue of such works or rehabilitated existing electrical generating facilities for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor; (b) to provide for all expenses of operation, maintenance, replacement and depreciation of such works or rehabilitated existing electrical generating facilities, including reserves therefor; (c) to pay and discharge notes, bonds or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such works or rehabilitated existing electrical generating facilities may have been pledged, charged or encumbered; (d) to pay and discharge notes, bonds or other obligations and interest thereon which do not constitute a lien, charge or encumbrance on the revenue of such works or rehabilitated existing electrical generating facilities, which may have been issued for the purpose of financing the acquisition, construction, reconstruction, improvement, betterment or extension of such works or to rehabilitate existing electrical generating facilities; and (e) provide a reserve for improvements to such works or rehabilitated existing electrical generating facilities. Unless and until full and adequate provision has been made for the foregoing purposes, no city shall have the right to transfer the revenue of such works or rehabilitated existing electrical generating facilities to its general fund. [1967, ch. 429, § 193, p. 1249; am. 1977, ch. 50, § 5, p. 91.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

ANALYSIS

Maintenance, replacement and depreciation.
Ordinary and necessary expenses.

Maintenance, Replacement and Depreciation.

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact the connection fee may be higher in such city than in other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; since the ordinance specifically states that its intent is to "recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems and any extensions thereof," there was nothing in the ordinance that is not authorized by the Idaho revenue bond act and the court found no evidence in the record that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and

are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho revenue bond act, the fees are not collected for general revenue raising purposes and are, therefore, not taxes requiring approval of the electorate; under these circumstances a municipality may collect fees, rates or charges pursuant to the power granted in the Idaho revenue bond act to pay for maintenance, depreciation and replacement of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because subsection (b) of this section allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city's wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995).

Ordinary and Necessary Expenses.

A municipality may accumulate collected revenues from rates, charges or fees to fund the cost of replacement of system components in its public works projects which are ordinary and necessary. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

50-1034. Preliminary expenses. — The city may provide for the payment of all necessary preliminary expenses actually incurred in the making of surveys, estimates of costs and revenues, employment of engineers and other employees, making of notices, taking of options, legal and clerical help and all other expenses necessary to be made and paid prior to the authorization for the issuance of such revenue bonds, provided, that no such expenditures shall be made or paid unless an appropriation has been made therefor in the same manner as is required by law for city funds. Any funds so expended by the city shall be fully reimbursed and repaid to the city out of the sale of such revenue bonds before any other disbursements are made therefrom, and the amount so advanced by the city to pay such preliminary expenses shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided. [1967, ch. 429, § 194, p. 1249.]

RESEARCH REFERENCES

A.L.R. — Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

50-1035. Ordinance prior to construction — Election. [Effective until January 1, 2011.] — Before any city shall construct or acquire any works or rehabilitated existing electrical generating facilities under this act,

the council of such city shall enact an ordinance or ordinances which shall, (a) set forth a brief and general description of the works or rehabilitated existing electrical generating facilities, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works or the rehabilitation of such existing electrical generating facilities; (d) direct that revenue bonds of the city shall be issued pursuant to this act in such amount as may be necessary to pay the cost of the works or rehabilitated existing electrical generating facilities; and (e) contain such other provisions as may be necessary in the proposal.

Such ordinance shall be passed, approved and published as provided by law for the enactment of general ordinances, but such city shall not incur or authorize in any year any indebtedness or liability under said ordinance exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors of such city voting at an election held for the purpose of authorizing or refusing to authorize the indebtedness or liability provided for in said ordinance; provided, that any city may, with the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such city, water systems, sewerage systems, water treatment plants, sewerage treatment plants, or to rehabilitate existing electrical generating facilities, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities.

Said ordinances shall provide for the holding of said election and the giving of notice thereof by publication in the official newspaper of the city, said publication to be once a week for two (2) successive weeks prior to such election. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

"In favor of issuing revenue bonds for the purposes provided by Ordinance No."

"Against the issuance of revenue bonds for the purposes provided by Ordinance No."

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance. [1967, ch. 429, § 195, p. 1249; am. 1973, ch. 40, § 1, p. 75; am. 1977, ch. 50, § 6, p. 91; am. 1981, ch. 300, § 2, p. 620.]

STATUTORY NOTES

Cross References. — Revenue bond act, § 50-1027 et seq.

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-1035.

Section 2 of S.L. 1978, ch. 330 purported to amend this section. Section 3 of that act provided that the act should take effect when the amendment to Article VIII, § 3 of the Idaho Constitution which was proposed by

the second regular session of the Forty-Fourth Idaho Legislature was ratified. However, the proposed constitutional amendment was defeated and, accordingly, the amendment to this section never took effect.

For words "this act", see Compiler's Notes, § 50-102.

Effective Dates. — Section 1 of S.L. 1973, ch. 40 declared an emergency. Approved February 26, 1973.

JUDICIAL DECISIONS

Requirement by Election.

Where city based connection fees charged users of water and sewer system on formula termed "equity buy-in" and city annually was required to revalue the fees pursuant to the formula and all revenue from the fees was placed in a separate account and used only for replacement of existing facilities and equipment, no moneys were placed in the general

operating funds of the city and none was used for expansion or improvement of the existing system it was not necessary that a municipality have an election such as prescribed in Const., Art. VIII, § 3 prior to changing the rates, fees or charges imposed in establishing the cost of public works services such as sewer or water connection fees. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

DECISIONS UNDER PRIOR LAW

Laws Controlling Elections.

Revenue bond elections were controlled by laws of the state governing municipal elections and not by laws of the state relating to general obligation bond election, since village

and taxpayers were not obligated to pay revenue bonds as in the case of general obligation bonds. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

50-1035. Ordinance prior to construction — Election. [Effective January 1, 2011.] — Before any city shall construct or acquire any works or rehabilitated existing electrical generating facilities under this chapter, the council of such city shall enact an ordinance or ordinances which shall, (a) set forth a brief and general description of the works or rehabilitated existing electrical generating facilities, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works or the rehabilitation of such existing electrical generating facilities; (d) direct that revenue bonds of the city shall be issued pursuant to this chapter in such amount as may be necessary to pay the cost of the works or rehabilitated existing electrical generating facilities; and (e) contain such other provisions as may be necessary in the proposal.

Such ordinance shall be passed, approved and published as provided by law for the enactment of general ordinances, but such city shall not incur or authorize in any year any indebtedness or liability under said ordinance exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors of such city voting at an election held for the purpose of authorizing or refusing to authorize the indebtedness or liability provided for in said ordinance;

provided, that any city may, with the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such city, water systems, sewerage systems, water treatment plants, sewerage treatment plants, or to rehabilitate existing electrical generating facilities, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities.

Said ordinances shall provide for the holding of said election in accordance with the dates authorized in section 50-405, Idaho Code, by the county clerk in accordance with the provisions of title 34, Idaho Code. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

“In favor of issuing revenue bonds for the purposes provided by Ordinance No.”

“Against the issuance of revenue bonds for the purposes provided by Ordinance No.”

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance. [1967, ch. 429, § 195, p. 1249; am. 1973, ch. 40, § 1, p. 75; am. 1977, ch. 50, § 6, p. 91; am. 1981, ch. 300, § 2, p. 620; am. 2009, ch. 341, § 128, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first paragraph, twice substituted “chapter” for “act”; and rewrote the first sentence in the third paragraph, which formerly read: “Said ordinances shall provide for the holding of said election and the giving of notice thereof by publication in the official newspaper of the city, said publication to be

once a week for two (2) successive weeks prior to such election.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-1035.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-1035A. Issuance of revenue bonds at rates of interest in excess of original specification. — Any city may issue revenue bonds of the city bearing interest at such rate or rates as shall be prescribed by ordinance if:

(a) The principal amount of such revenue bonds does not exceed the then unissued balance of the principal amount of revenue bonds of the same type authorized at an election heretofore held in the city;

(b) The revenue bonds are issued for the same purpose as that for which the unissued bonds were authorized; and

(c) The bonds are issued in accordance with the provisions of the revenue bond act; provided, that an election shall have been held and conducted in

the manner provided in section 50-1035, Idaho Code, on the proposition of issuing revenue bonds under the provisions of this section at a rate or rates of interest in excess of the maximum rate of interest specified in the notice of election at which the unissued bonds were authorized and the proposition shall have been approved by the same percentage of the qualified electors of the city voting at the election as was required in section 50-1035, Idaho Code, at the election at which the unissued bonds were authorized. [I.C., § 50-1035A, as added by 1981, ch. 300, § 3, p. 620.]

STATUTORY NOTES

Cross References. — Revenue bond act, ch. 300 declared an emergency. Approved § 50-1027 et seq. April 7, 1981.

Effective Dates. — Section 4 of S.L. 1981,

50-1036. Bonds — Form — Conditions — Bond anticipation notes.

— (a) All revenue bonds issued under authority of this act shall be sold, executed and delivered in the same manner as provided by the municipal bond law for the sale of general obligation negotiable coupon bonds, except that issues of revenue bonds may, in the discretion of the governing body, be sold at a private sale without advertising the same at competitive bidding and at a price above, at, or below par. The ordinance authorizing the issuance of said bonds shall prescribe the form of bonds. Said bonds shall bear interest at a rate or rates, payable annually, or at such lesser intervals as may be prescribed by ordinance; may be in one (1) or more series, bear such date or dates, mature at such time or times, and be redeemable before maturity at the option of the city; may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such ordinance may provide. Pending preparation of the bonds, interim certificates, in such form and with such provisions as the council may determine, may be issued. Said bonds and interim certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.

Notwithstanding the provisions of the municipal bond law, the governing body in any proceedings authorizing bonds under this act may:

- (1) provide for the initial issuance of one (1) or more bonds, in this act called "bond," aggregating the amount of the entire issue;
- (2) make such provision for instalment payments of the principal amount of any such bond as it may consider desirable;
- (3) provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the indorsing of payments of interest on such bonds; and
- (4) further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either

coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(b) Whenever the governing body considers it advisable and in the interests of the city to anticipate the issuance of revenue bonds to be issued under this act, the governing body may from time to time and pursuant to appropriate resolution issue bond anticipation notes. Each resolution authorizing the issuance of bond anticipation notes shall:

(1) describe the revenue bonds in anticipation of which the notes are to be issued; and

(2) shall specify the principal amount of the notes, the rate of interest and maturity date of the notes, which maturity date shall be not to exceed five (5) years from the date of issue of such notes; but the time of payment of any such notes may be extended for a period of not exceeding three (3) years from their maturity date.

Bond anticipation notes shall be issued and sold from time to time in such manner and at such price as the governing body shall by resolution determine. Bond anticipation notes shall be in bearer form, except that the governing body may provide for the registration of the notes in the name of the owner either as to principal alone, or as to principal and interest, and on such terms and conditions as the governing body may determine in the authorizing resolution. Interest on bond anticipation notes may be made payable semiannually, annually, or at maturity. Bond anticipation notes may be made redeemable prior to maturity at the option of the governing body in the manner and upon the terms fixed by the resolution authorizing their issuance. Bond anticipation notes shall be executed and shall be in such form and have such details and terms as shall be provided in the authorizing resolution.

Contemporaneously with the issuance of the revenue bonds in anticipation of which bond anticipation notes are issued, all bond anticipation notes so issued, even though they may not then have matured, shall be paid, both as to principal and interest, to date of payment; and all such notes shall be surrendered and canceled.

Bond anticipation notes and the interest on them shall be secured by a pledge of the income and revenues derived by the city from the project to be undertaken with the proceeds of the bond anticipation notes and shall also be made payable from funds derived from the sale of the revenue bonds in anticipation of which the notes are issued.

Bond anticipation notes may be refunded by the issuance of other bond anticipation notes maturing within not more than eight (8) years from the date of the issuance of the initial issue of bond anticipation notes for which this refunding is to be effected. [1967, ch. 429, § 196, p. 1249; am. 1970, ch. 133, § 13, p. 23; am. 1970, ch. 219, § 1, p. 619; am. 1971, ch. 330, § 1, p. 1297; am. 1978, ch. 176, § 2, p. 402; am. 1981, ch. 300, § 1, p. 620.]

STATUTORY NOTES

Cross References. — Municipal bond law, § 57-201 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

Effective Dates. — Section 3 of S.L. 1978, ch. 176 declared an emergency. Approved March 20, 1978.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Procedure.

Former similar section specifically provided that revenue bonds issued under authority thereof should be sold, executed and delivered in the same manner as provided by the "municipal bond law" (§ 57-201 et seq.) and such

bonds under § 57-218 could be authorized, issued and sold either by ordinance or resolution and without a vote of the electors of the village. *Adams v. Pritchard*, 88 Idaho 325, 399 P.2d 252 (1965).

50-1037. Bonds — Issuance — Terms — Conditions. — Whenever revenue bonds are authorized to be issued, the city council shall by ordinance provide for the issuance thereof. The ordinance authorizing the issuance of said revenue bonds, for the purpose authorized, shall contain covenants as to:

(a) The purpose or purposes to which the proceeds of the sale of said bonds may be applied and the use and disposition thereof;

(b) The use and disposition of the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds are to be issued, including the creation and maintenance of reserves;

(c) The transfer from the general fund of the city to the account or accounts of the works or rehabilitated existing electrical generating facilities, of a sum or sums of money for furnishing the city or any of its departments, boards or agencies with the services, facilities and commodities of such works or rehabilitated existing electrical generating facilities;

(d) The issuance of other or additional bonds payable from the revenue of such works or rehabilitated existing electrical generating facilities;

(e) The operation and maintenance of such works or rehabilitated existing electrical generating facilities;

(f) The insurance to be carried thereon, the use and disposition of insurance moneys;

(g) Books of account and inspection and audit thereof;

(h) The appointment and duties of a trustee. Provisions may be made for the securing of the bonds by a trust indenture, but no such indenture shall convey, mortgage or create any lien upon property of the city;

(i) The terms and conditions upon which the holders thereof or any trustee therefor shall be entitled to the appointment of a receiver which receiver may enter and take possession of such works, operate and maintain the same, prescribe rates, fees, tolls or charges and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the city itself might do. The provisions of this section and of any such ordinance shall be a contract with the holder of said bonds, and the duties of the city and its council under this section and under such ordinance, shall be enforceable by the holder by mandamus or other appropriate suit, action or proceeding at law or in equity. [1967, ch. 429, § 197, p. 1249; am. 1977, ch. 50, § 7, p. 91.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Appointment of Receiver.

Provision in ordinance authorizing appointment of receiver for water and sewerage system on default in payment of principal or

interest of revenue bonds was authorized former similar section. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

50-1038. Validity of bonds. — Any ordinance authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to section [sections] 50-1027 through 50-1042[, Idaho Code], which recital shall be conclusive evidence of their validity and of the regularity of their issuance. [1967, ch. 429, § 198, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-1039. Lien of bonds. — All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have prior and paramount lien on the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds have been issued, except that where provision is made in the ordinance authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such ordinance, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such ordinance. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the Revenue Bond Act and the ordinance authorizing said bonds. [1967, ch. 429, § 199, p. 1249; am. 1970, ch. 219, § 1, p. 619; am. 1977, ch. 50, § 8, p. 91.]

STATUTORY NOTES

Cross References. — Revenue bond act, § 50-1027 et seq.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Parity of Liens.

An ordinance was not invalid on the ground that it authorized issuance in the future of a second issue of revenue bonds to enjoy complete parity of lien with bonds of first issue providing certain required conditions were

fulfilled, as priority of first issue was exclusively for the benefit of the holders of the bonds under first issue and same could be waived. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

50-1040. City not liable on bonds. — Bonds issued pursuant to sections 50-1027 through 50-1042[, Idaho Code,] shall not be a debt of the city and the city shall not be liable thereon, nor shall they be payable out of any funds other than the revenue pledged to the payment thereof. Each bond issued under the Revenue Bond Act shall recite, in substance, that said bond, including interest thereon, is payable solely from the revenue pledge to the payment thereof. Bonds may be issued under sections 50-1027 through 50-1042[, Idaho Code,] notwithstanding and without regard to any limitation or restriction on the amount or percentage of indebtedness, or of outstanding obligations of a city. [1967, ch. 429, § 200, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-1041. Tax levy to pay bonds prohibited. — The provisions of [section] 57-203, Idaho Code, relating to the levy of taxes for the payment of bonds, shall not be applicable to bonds issued by a city under the Revenue Bond Act, and the principal or interest thereof shall not be charged upon the city issuing the same. The holder or holders of any bonds issued under the Revenue Bond Act shall not have the right to compel any exercise of the taxing power of the city to pay said bonds or the interest thereon. [1967, ch. 429, § 201, p. 1249.]

STATUTORY NOTES

Cross References. — Revenue bond act, § 50-1027 et seq. “section” in the first sentence was inserted by the compiler to correct the statutory citation style.

Compiler's Notes. — The bracketed word style.

50-1042. Projects and bonds exempt from taxation. — So long as a city shall own any works or rehabilitated existing electrical generating facilities, the property and revenue of such works or rehabilitated existing electrical generating facilities shall be exempt from taxation. Bonds issued under sections 50-1027 through 50-1042, Idaho Code, and the income therefrom shall be exempt from taxation, except transfer and estate taxes. [1967, ch. 429, § 202, p. 1249; am. 1977, ch. 50, § 9, p. 91.]

50-1043. Short title. — This act shall be known and may be cited as the “City Property Tax Alternatives Act of 1978.” [1978, ch. 261, § 1, p. 567.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” refer to S.L. 1978, ch. 261 compiled as §§ 50-1043 to 50-1048.

50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement, and collect certain city nonproperty taxes. — The voters of any resort city with a population not in excess of ten thousand (10,000) according to the most recent census within the state of Idaho, organized under the general laws of the state, special charter, or a general incorporation act, are hereby given the freedom to authorize their city government to adopt, implement, and collect one or more local-option nonproperty taxes as provided herein. A resort city is a city that derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination city for an extended period of time. The corporate authorities of any such resort city are hereby given the freedom and authority to adopt, implement, and collect one or more local-option nonproperty taxes as provided herein, if approved by the required majority of city voters voting in an election as provided herein. No local-option nonproperty tax proposal may be presented to resort city voters for approval or modification for a period of one (1) year after an election to approve or disapprove such tax. The election may be a special election conducted for the exclusive purpose of approving or disapproving such tax, or may be conducted as a part of any other special or general city election. [1978, ch. 261, § 2, p. 567; am. 1981, ch. 328, § 1, p. 687.]

STATUTORY NOTES

Cross References. — General and special city elections, § 50-429.

50-1045. City property tax relief fund. — Any resort city may establish a city property tax relief fund into which may be placed all or any portion of revenues received from any nonproperty tax levied in accordance with the provisions of this act and such nonproperty tax revenues may be used to replace city property taxes in the ensuing fiscal year by the amount of nonproperty tax revenues placed in the city property tax relief fund if city voters have approved of such use of nonproperty tax revenues in the election authorizing such city nonproperty tax. Any resort city that receives more revenues from any local-option nonproperty tax than such city has budgeted shall establish a city property tax relief fund into which shall be placed all revenues received in excess of the budget amount and such excess revenues shall be used to replace city property taxes in the ensuing fiscal year by the amount of all excess revenues placed in said city property tax relief fund. [1978, ch. 261, § 3, p. 567.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-1043.

50-1046. City local-option nonproperty taxes permitted by sixty per cent majority vote. — A sixty per cent (60%) majority of the voters of any resort city voting on the question may approve and, upon such approval,

any city may adopt, implement, and collect, subject to the provisions of this act, the following city local-option nonproperty taxes: (a) an occupancy tax upon hotel, motel, and other sleeping accommodations rented or leased for a period of thirty (30) days or less; (b) a tax upon liquor by-the-drink, wine and beer sold at retail for consumption on the licensed premises; and (c) a sales tax upon part or all of sales subject to taxation under chapter 36, title 63, Idaho Code. [1978, ch. 261, § 4, p. 567; am. 1984, ch. 225, § 1, p. 542.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-1043.

JUDICIAL DECISIONS

Cited in: Sun Valley Co. v. City of Sun Valley, 109 Idaho 724, 708 P.2d 147 (1985).

OPINIONS OF ATTORNEY GENERAL

A vendor who sells a ski lift ticket from a location within the city limits of the City of Sun Valley has a responsibility to collect city local option sales tax from the purchaser of the ticket; the tax thus collected must be remitted to the City of Sun Valley in the

manner provided in the city's municipal sales tax ordinance. OAG 91-6.

The City of Sun Valley may impose its local option sales tax on building materials sales made in the city. OAG 91-6.

50-1047. General provisions. — Any ordinance assessing a tax pursuant to this act shall contain a finding by the local governing body of the city based upon evidence presented to it that the condition set forth in section 50-1044, Idaho Code, exists and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the city official designated in such ordinance or other such official contracting, pursuant to this act, with the city to provide collection services, and shall constitute revenue of the city available for any lawful corporate purpose approved by city voters subject to the provisions of this act. In any election, the ordinance submitted to city voters shall: (a) state and define the specific tax to be approved; (b) state the exact rate of the tax to be assessed; (c) state the exact purpose or purposes for which the revenues derived from the tax shall be used; and (d) state the duration of the tax. No tax shall be redefined, no rate shall be increased, no purpose shall be modified, and no duration shall be extended without subsequent approval of city voters. An ordinance adopting any local-option nonproperty tax authorized by this act may provide for separate identification of taxes as may be appropriate. The city clerk of any city adopting an ordinance pursuant to this act shall, immediately following approval of such ordinance, or any amendment thereto, forward a copy of said ordinance or amendment to the chairman of the state tax commission, and the chairman of the state board of tax appeals. [I.C., § 50-1047, as added by 1978, ch. 261, § 5, p. 567; am. 1979, ch. 221, § 1, p. 615; am. 1994, ch. 180, § 92, p. 420; am. 2003, ch. 32, § 25, p. 115.]

STATUTORY NOTES

Cross References. — State board of tax appeals, § 63-3801 et seq.

State tax commission, § 63-101.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-1043.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since the amendment was adopted, the amendment to this section by § 92 of S.L. 1994, ch. 180 became effective January 2, 1995.

50-1048. Coordination with county local-option nonproperty taxes. — In the event that counties are given local-option nonproperty tax authority, it is the intent of the legislature that such county local-option nonproperty taxes be coordinated with existing city local-option nonproperty taxes in the county. [1978, ch. 261, § 6, p. 567.]

STATUTORY NOTES

Compiler's Notes. — Section 7 of S.L. 1978, ch. 261 read: "**Provisions ruled invalid.** — If any section, subdivision, paragraph, sentence, clause, or provision of this act shall be unconstitutional or ineffective for any reason, in whole or in part to the extent that it is not unconstitutional or ineffective it

shall be valid and effective and no other section, subdivision, paragraph, sentence, clause, or provision shall on account thereof be deemed invalid or ineffective".

Effective Dates. — Section 8 of S.L. 1978, ch. 261 provided that the act should take effect July 1, 1978.

50-1049. Collection and administration of local-option nonproperty taxes by state tax commission — Distribution. — (a) A city which has levied a tax pursuant to section 50-1044, Idaho Code, may contract with the state tax commission for the collection and administration of such taxes in like manner and under the definitions, rules and regulations of the tax commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. A city which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of taxpayers relating to such tax. Alternatively, such city shall have authority to administer and collect such tax.

(b) All revenues collected by the tax commission pursuant to section 50-1044, Idaho Code, shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated;

(2) An amount of money equal to such fee as may be agreed upon between the commission and such city for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in paragraph (3) of this subsection;

(3) All remaining moneys received pursuant to this chapter shall be placed in an account designated by the state controller and remitted monthly to the city levying such tax. [I.C., § 50-1049, as added by 1979, ch. 221, § 2, p. 615; am. 1986, ch. 73, § 7, p. 201; am. 1994, ch. 180, § 93, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

State refund account, § 63-3067.

State tax commission, § 63-101.

Effective Dates. — Section 241 of S.L. 1994, ch. 180, provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 93 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 11

PLANNING COMMISSIONS

SECTION.

50-1101 — 50-1106. [Repealed.]

50-1101 — 50-1106. [Repealed.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler's Notes. — These sections,

which comprised S.L. 1967, ch. 429, §§ 203-208, p. 1249, were repealed by S.L. 1975, ch. 188, § 1, effective July 1, 1975. For present comparable law, see § 67-6501 et seq.

CHAPTER 12

ZONING

SECTION.

50-1201 — 50-1210. [Repealed.]

50-1201 — 50-1210. [Repealed.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler's Notes. — These sections,

which comprised S.L. 1967, ch. 429, §§ 209-218, p. 1249, were repealed by S.L. 1975, ch. 188, § 1, effective July 1, 1975. For present comparable law, see § 67-6501 et seq.

CHAPTER 13

PLATS AND VACATIONS

SECTION.

50-1301. Definitions.

50-1302. Duty to file.

50-1303. Survey — Stakes and monuments
— Accuracy.

SECTION.

50-1304. Essentials of plats.

50-1305. Verification.

50-1306. Extraterritorial effects of subdivision — Property within the

SECTION.

area of city impact — Rights of city to comment.

50-1306A. Vacation of plats — Procedure.

50-1307. Designation of townsite and addition — Necessity of distinctiveness — Limitations on rule.

50-1308. Approvals.

50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads.

50-1310. Filing and recording — Record of plats — Filing of copy.

50-1311. Indexing of plat records.

50-1312. Effect of acknowledging and recording plat.

50-1313. Dedication must be accepted.

50-1314. Enforcing execution of plat — Assessment of costs.

50-1315. Existing plats validated.

50-1316. Penalty for selling unplatted lots.

50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing.

50-1318. In absence of opposition — Grant of petition — Restrictions.

50-1319. In presence of opposition — Continuance of application — Hearing — When petition granted.

50-1320. Vesting of title on vacation.

50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limi-

SECTION.

tation on rule — Prerequisites to order of vacation.

50-1322. Appeal from order granting or denying application to vacate.

50-1323. Limitation of actions to establish adverse rights or question validity of vacation.

50-1324. Recording vacations.

50-1325. Easements — Vacation of.

50-1326. All plats to bear a sanitary restriction — Submission of plans and specifications of water and sewage systems to state department of environmental quality — Removal or reimposition of sanitary restriction.

50-1327. Filing or recording of noncomplying map or plat prohibited.

50-1328. Rules for the administration and enforcement of sanitary restriction.

50-1329. Violation a misdemeanor.

50-1330. Jurisdiction of public streets and public rights of way within a highway district.

50-1331. Setting of interior monuments for a subdivision.

50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work.

50-1333. Recording of plats with only exterior monuments referenced.

50-1334. Review of water systems encompassed by plats.

50-1301. Definitions. — The following definitions shall apply to terms used in sections 50-1301 through 50-1334, Idaho Code.

1. Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;

2. Functioning street department: A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system which qualifies such department to receive funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

3. Idaho coordinate system: That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

4. Monument: A physical structure or object that occupies the position of a corner;

5. Owner: The proprietor of the land, (having legal title);

6. Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

7. Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

8. Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

9. Public land survey corner: Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management;

10. Public right-of-way: Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

11. Public street: A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

12. Reference monument: A special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is known and recorded, and which serves to witness the corner;

13. Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the state board of health [and welfare] by its administrator or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

14. Street: A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

15. Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above definition;

16. Witness corner: A monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner. [1967, ch. 429, § 219, p. 1249; am. 1970, ch. 184, § 1, p. 533; am. 1971, ch. 329, § 1, p. 1294; am. 1988, ch. 175, § 1, p. 306; am. 1990, ch. 170, § 1, p. 367; am. 1992, ch. 262, § 1, p. 778; am. 1994, ch. 364, § 4, p. 1139; am. 1997, ch. 190, § 1, p. 517; am. 1998, ch. 220, § 1, p. 753; am. 1999, ch. 89, § 1, p. 290.]

STATUTORY NOTES

Cross References. — Highway distribution account, § 50-301.

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler's Notes. — The bracketed insertion in subsection (13) was made by the compiler to reflect a name change authorized by S.L. 1973, ch. 286, § 1 and S.L. 1974, ch. 23, § 47.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

Section 2 of S.L. 1970, ch. 184 declared an emergency. Approved March 13, 1970.

JUDICIAL DECISIONS

ANALYSIS

Naming and numbering streets.
Subdivision.

Naming and Numbering Streets.

Since the purposes of the local planning act (§ 67-6501 et seq.) and the duties of those charged with its administration are closely related to the planning and zoning functions that have long been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since § 40-501 was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 — 50-1329 governing the filing of subdivision plats provide that all plats must be presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in the planning act suggests a legislative intent for the planning and standard setting of the act in respect to highways to flow to highway districts by rea-

son of the language of § 40-1611 and since § 67-6501 et seq. were enacted after §§ 40-1611 and 40-1615, the local planning act gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Subdivision.

County planning and zoning commission was not required to approve landowner's plot where plot was divided into three lots and met neither statutory requirements nor county requirements for a subdivision. *Tranmer v. Helmer*, 126 Idaho 88, 878 P.2d 787 (1994).

Cited in: *Monaco v. Bennion*, 99 Idaho 529, 585 P.2d 608 (1978); *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000); *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006).

50-1302. Duty to file. — Every owner creating a subdivision, as defined above, shall cause the same to be surveyed and a plat made thereof which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. [1967, ch. 429, § 220, p. 1249; am. 1997, ch. 190, § 2, p. 517.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Description of property in dispute.
Evidence.

Intention to dedicate.
Unopened streets.

Description of Property in Dispute.

In an action to resolve a boundary dispute, the descriptions of both parties' properties was by the lot numbers designated on the plat of the addition as authorized by former section governing filing of plats. *Nutterville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

Evidence.

The admission of the testimony of an engineer and the plat prepared by him was improper without a foundation first being laid that he was actually ascertaining the original lines of the original plat or without a prior determination that the monuments of the original plat had been lost and could not be reestablished. *Nutterville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

Intention to Dedicate.

First essential of a dedication was intention of owner of land to dedicate it, and such intention was usually shown by plat filed. Contrary intention could not be shown by something hidden in mind of landowner. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

Unopened Streets.

There could be dedicated to public, land for street purposes which was not at time of dedication in condition to be traveled by public. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

50-1303. Survey — Stakes and monuments — Accuracy. — The centerline intersections and points where the centerline changes direction on all streets, avenues, and public highways, and all points, witness corners and reference monuments on the exterior boundary where the boundary line changes direction shall be marked with magnetically detectable monuments the minimum size of which shall be five-eighths (5/8) of an inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument and all lot and block corners, witness corners and reference monuments for lot and block corners shall be marked with monuments conforming to the provisions of section 54-1227, Idaho Code. Monuments shall be plainly and permanently marked so that measurements may be taken to the marks within one-tenth (1/10) of a foot. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but the block corners shall be monumented in order to permit the accurate identification of each burial lot within the cemetery. The monuments shall conform to the provisions of section 54-1227, Idaho Code. The locations and descriptions of all monuments within a platted cemetery shall be recorded upon the plat, and the courses and distances of all boundary lines shall be shown, but may be shown by legend. The survey for any plat shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of not less than one (1) part in five thousand (5,000). [1967, ch. 429, § 221, p. 1249; am. 1997, ch. 190, § 3, p. 517; am. 1998, ch. 220, § 2, p. 753; am. 2008, ch. 378, § 1, p. 1023.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

50-1304. Essentials of plats. — All plats offered for record in any county shall be prepared in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, by either a photo-

graphic process using a silver image emulsion or by use of a black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. Plats shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey of the subdivision shall be drawn at a scale suitable to insure the clarity of all lines, bearings and dimensions. In the event that any subdivision is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets. The required dedications, acknowledgements and certifications shall appear on any of the serially numbered sheets.

The plat shall show: (a) the streets and alleys, with widths and courses clearly shown; (b) each street named; (c) all lots numbered consecutively in each block, and each block lettered or numbered, provided, however, in a platted cemetery, that each block, section, district or division and each burial lot shall be designated by number or letter or name; (d) each and all lengths of the boundaries of each lot shall be shown, provided, however, in a platted cemetery, that lengths of the boundaries of each burial lot may be shown by appropriate legend; (e) the exterior boundaries shown by distance and bearing; (f) descriptions of survey monuments; (g) point of beginning with ties to at least two (2) public land survey corner monuments in one (1) or more of the sections containing the subdivision, or in lieu of public land survey corner monuments, to two (2) monuments recognized by the county surveyor; and also, if required by the city or county governing bodies, give coordinates based on the Idaho coordinate system; (h) the easements; (i) basis of bearings; and (j) subdivision name. [1967, ch. 429, § 222, p. 1249; am. 1978, ch. 106, § 1, p. 218; am. 1990, ch. 170, § 2, p. 367; am. 1997, ch. 190, § 4, p. 517.]

50-1305. Verification. — The county shall choose and require an Idaho professional land surveyor to check the plat and computations thereon to determine that the requirements herein are met, and said professional land surveyor shall certify such compliance on the plat. Such certification shall not relieve the professional land surveyor who prepared the plat from responsibility for the plat. For performing such service the county shall collect from the subdivider a fee as provided by local ordinance reasonably related to the cost of providing such service. [1967, ch. 429, § 223, p. 1249; am. 1979, ch. 88, § 1, p. 214; am. 1989, ch. 102, § 1, p. 235; am. 1997, ch. 190, § 5, p. 517.]

50-1306. Extraterritorial effects of subdivision — Property within the area of city impact — Rights of city to comment. — All

plats situate within an officially designated area of city impact as provided for in section 67-6526, Idaho Code, shall be administered in accordance with the provisions set forth in the adopted city or county zoning and subdivision ordinances having jurisdiction. In the situation where no area of city impact has been officially adopted, the county with jurisdiction shall transmit all proposed plats situate within one (1) mile outside the limits of any incorporated city which has adopted a comprehensive plan or subdivision ordinance to said city for review and comment at least fourteen (14) days before the first official decision regarding the subdivision is to be made by the county. Items which may be considered by the city include, but are not limited to, continuity of street pattern, street widths, integrity and continuity of utility systems and drainage provisions. The city's subdivision ordinance and/or comprehensive plan shall be used as guidelines for making the comments hereby authorized. The county shall consider all comments submitted by the city. Where the one (1) mile area of impact perimeter of two (2) cities overlaps, both cities shall be notified and allowed to submit comments. [1967, ch. 429, § 224, p. 1249; am. 1979, ch. 88, § 2, p. 214; am. 1999, ch. 391, § 1, p. 1088.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1999, ch. 391 declared an emergency. Approved March 29, 1999.

JUDICIAL DECISIONS

In General.

This section defines the respective jurisdictions of a city and a county that share contiguous boundaries but have not acted to create an area of impact, by outlining an approval procedure to be followed when a subdivision is located within one mile of the city limits.

Blaha v. Board of Ada County Comm'rs, 134 Idaho 770, 9 P.3d 1236 (2000).

Cited in: *Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).

50-1306A. Vacation of plats — Procedure. — (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city must petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where

there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in subsection (4) of this section.

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted. [I.C., § 50-1306A, as added by 1971, ch. 6, § 1, p. 16; am. 1985, ch. 244, § 1, p. 575; am. 1989, ch. 247, § 1, p. 596; am. 1992, ch. 262, § 2, p. 778; am. 1994, ch. 364, § 5, p. 1139; am. 1997, ch. 190, § 6, p. 517; am. 1998, ch. 220, § 3, p. 753.]

JUDICIAL DECISIONS

Cited in: Williams Lake Lands, Inc. v. LeMoyné Dev., Inc., 108 Idaho 826, 702 P.2d 864 (Ct. App. 1985).

50-1307. Designation of townsite and addition — Necessity of distinctiveness — Limitations on rule. — Plats of towns, subdivisions or additions must not bear the name of any other town or addition in the same county, nor can the same word or words similar or pronounced the same, be used in making a name for said town or addition, except the words city, place, court, addition or similar words, unless the same is contiguous and laid out and platted by the same party or parties platting the addition

bearing the same name, or a party files and records the written consent of the party or parties who platted the addition bearing the same name. All plats of the same name must continue the block numbers of the plat previously filed. [1967, ch. 429, § 225, p. 1249.]

50-1308. Approvals. — (1) If a subdivision is not within the corporate limits of a city, the plat thereof shall be submitted, accepted and approved by the board of commissioners of the county in which the tract is located in the same manner and as herein provided. If the city or county has established a planning commission, then all plats must be submitted to said commission in accordance with provisions of chapter 65, title 67, Idaho Code. No plat of a subdivision requiring city approval shall be accepted for record by the county recorder unless said plat shall have first been submitted to the city and has been accepted and approved and shall have written thereon the acceptance and approval of the said city council and bear the signature of the city engineer and city clerk. No plat of a subdivision shall be accepted for record by the county recorder unless said plat has been certified, within thirty (30) days prior to recording, by the county treasurer of the county in which the tract is located. The county treasurer shall not withhold certification for any reason except for county property taxes due, but not paid, upon the property included in the proposed subdivision.

(2) Plats resulting from the exercise of any right granted under the provisions of sections 50-1314 and 63-210(2), Idaho Code, may be accepted for record and recorded by the county recorder without being certified by the county treasurer and the record of any such plat which has previously been recorded without being certified by the county treasurer shall not be invalid or defective because of not having been so certified by the county treasurer. [1967, ch. 429, § 226, p. 1249; am. 1979, ch. 286, § 1, p. 731; am. 1981, ch. 304, § 1, p. 626; am. 1981, ch. 317, § 1, p. 661; am. 1996, ch. 322, § 52, p. 1029; am. 1997, ch. 190, § 7, p. 517.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1981, ch. 304 declared an emergency and provided that the act should be in full force and effect

on and after approval and retroactively to January 1, 1981. Approved April 7, 1981.

JUDICIAL DECISIONS

ANALYSIS

Acceptance of plat.
Approval denied.
Subdivision application.

Acceptance of Plat.

While § 40-1611 appears to grant highway districts exclusive jurisdiction over highways within their districts, it does not give them the power or duty to accept subdivision plats; under the code as it existed when subdivision was created (1973), the county clearly had the authority to accept and approve the plat and the direct effect of that acceptance thorough-

fare was to dedicate it to the public use. *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

Approval Denied.

County planning and zoning commission was not required to approve landowner's plot where plot was divided into three lots and met neither statutory requirements nor county

requirements for a subdivision. *Tranmer v. Helmer*, 126 Idaho 88, 878 P.2d 787 (1994).

Subdivision Application.

The power to approve a subdivision application in the impact area resides exclusively

with the county, and the city's action in reviewing the subdivision application is advisory only and is not a prerequisite to action by the county. *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000).

50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads. — 1. The owner or owners of the land included in said plat shall make a certificate containing the correct legal description of the land, with the statement as to their intentions to include the same in the plat, and make a dedication of all public streets and rights-of-way shown on said plat, which certificate shall be acknowledged before an officer duly authorized to take acknowledgments and shall be indorsed on the plat. The professional land surveyor making the survey shall certify the correctness of said plat and he shall place his seal, signature and date on the plat.

2. No dedication or transfer of a private road to the public can be made without the specific approval of the appropriate public highway agency accepting such private road.

3. Highway districts shall not have jurisdiction over private roads designated as such on subdivision plats and shall assume no responsibility for the design, inspection, construction, maintenance and/or repair of private roads. [1967, ch. 429, § 227, p. 1249; am. 1988, ch. 175, § 2, p. 306; am. 1989, ch. 102, § 2, p. 235; am. 1992, ch. 262, § 3, p. 778; am. 1997, ch. 190, § 8, p. 517.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1988, ch. 175 declared an emergency. Approved March 26, 1988.

JUDICIAL DECISIONS

ANALYSIS

Dedication of streets and alleys.

Owner.

Public roads.

Dedication of Streets and Alleys.

Sales of lots by reference to lot and block following recording of a plat constitutes a dedication of the streets and alleys to public use. *Boise City ex rel. Amyx v. Fails*, 94 Idaho 840, 499 P.2d 326 (1972).

Owner.

Leasehold interests are not included within the meaning of "owner" under this section. *Allen v. Blaine County*, 131 Idaho 138, 953 P.2d 578 (1998).

Public Roads.

In a quiet title action in which residents of subdivision sought to enjoin defendant from

using two roads for access to his residence, defendant did not show that road and 60-foot easement he used to gain access to his property were public access roads, nor were the requirements under this section and § 50-1313 for the creation of a public road met. *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000).

Cited in: *Armand v. Opportunity Mgmt. Co.*, 141 Idaho 709, 117 P.3d 123 (2005).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Failure of title.
Spasmodic travel.

Failure of Title.

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

Spasmodic Travel.

Strip of land did not become a public street by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years and the presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

50-1310. Filing and recording — Record of plats — Filing of copy.

— All approved plats of subdivisions shall, upon the payment of the required fees, be filed by the county clerk or county recorder, and such filing with the date thereof shall be indorsed thereon. The plat or opaque copy thereof shall then be bound or filed with other plats of like character in a proper book or file designated as “Records of Plats.”

At the time of filing such plat, the owner or his representative shall also file with the county clerk or county recorder one (1) copy thereof. The copy shall be upon stable base drafting film with a minimum base thickness of 0.003 inches. The image thereon shall be by a photographic process using a silver image emulsion. The copy and image thereon shall be waterproof, tear-resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. The original plat shall be stored for safe keeping in a reproducible condition by the county. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. Full scale copies thereof shall be made available to the public, at the cost allowed in section 31-3205, Idaho Code, by the county recorder. [1967, ch. 429, § 228, p. 1249; am. 1978, ch. 106, § 2, p. 218; am. 1993, ch. 343, § 1, p. 1282; am. 1997, ch. 190, § 9, p. 517.]

50-1311. Indexing of plat records. — The said books of “record of plats” shall be provided in the front part thereof with indices, in which shall be duly entered in alphabetical order all maps, plats and diagrams recorded therein, and when so filed, bound and indexed, shall be the legal record of all such maps, plats, diagrams, dedication and other writings. [1967, ch. 429, § 229, p. 1249.]

50-1312. Effect of acknowledging and recording plat. — The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for public streets or other public use, or as is thereon dedicated to charitable, religious or educational purposes; provided, however, that in a county where a highway district exists and is in operation no such plat shall be accepted for recording by the county recorder unless the acceptance of said plat by the commissioners of the highway district is endorsed thereon in writing. [1967,

ch. 429, § 230, p. 1249; am. 1978, ch. 78, § 1, p. 153; am. 1992, ch. 262, § 4, p. 778.]

STATUTORY NOTES

Cross References. — Recording surveys,
§§ 55-1901 et seq.

JUDICIAL DECISIONS

ANALYSIS

Acceptance of plats.
Dedication of streets and alleys.
Land survey.
Statutory scheme governing dedication.

Acceptance of Plats.

While § 40-1611 appears to grant highway districts exclusive jurisdiction over highways within their districts, it does not give them the power or duty to accept subdivision plats; under the code as it existed when subdivision was created (1973), the county clearly had the authority to accept and approve the plat and the direct effect of that acceptance thoroughfare was to dedicate it to the public use. *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

Dedication of Streets and Alleys.

Sales of lots by reference to lot and block following recording of a plat constitutes a dedication of the streets and alleys to public use. *Boise City ex rel. Amyx v. Fails*, 94 Idaho 840, 499 P.2d 326 (1972).

The recording of the plat which referenced the segments of land at issue constituted a dedication of public roadway easements, through the segments, which the original developer had been permitted to delay improving until a later date. In addition, the language of this section makes it clear that the recording of a plat denominating a public street transfers an interest equivalent to a fee simple. *Volco, Inc. v. Lickley*, 126 Idaho 709, 889 P.2d 1099 (1995).

District court's finding that a boundary by agreement existed was not clearly erroneous because a fence had been standing between two properties for more than 50 years; moreover, the parties involved were adjoining landowners, despite being separated by a dedicated road, because the parties had an ownership interest up to the center of the dedicated street. *Neider v. Shaw*, 138 Idaho 503, 65 P.3d 525 (2003).

Land Survey.

The recording of a subdivision plat is intended to partition property and creates legally-recognized lots within the subdivision. A land survey does not subdivide land, nor does the filing of such a survey indicate with what intent the landowner surveyed his property. *State v. Bilbao*, 130 Idaho 500, 943 P.2d 926 (1997).

Magistrate erred in dismissing complaint against defendant for misdemeanor illegal subdivision, after concluding the statute of limitations had run because the allegedly illegal subdivision occurred in 1985 with the filing of a land survey. The record before the magistrate did not support his conclusion that the allegedly criminal act occurred in 1985, and not later, because the document filed by defendant in 1985 was a land survey, which does not subdivide land, and not a plat. *State v. Bilbao*, 130 Idaho 500, 943 P.2d 926 (1997).

Statutory Scheme Governing Dedication.

The statutory scheme governing the dedication of real property to the public involves two steps, the first of which is an offer by the owner to "dedicate" the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is evidenced by the acknowledgement and recording of a plat under this section, and the acceptance by action of a public body "accepting" and "confirming" the "dedication," as required by § 50-1313. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Completion of dedication.
Effect of dedication.

Title of municipality.

Validation of dedication.

Completion of Dedication.

Dedication was completed when plat was filed in proper office and lots sold with reference to it. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

Effect of Dedication.

By dedication of plat, public acquired only an estate necessary to adequate accommodation of public, consisting of an easement for free and unobstructed use of street and not a title in fee simple. *Shaw v. Johnston*, 17 Idaho 676, 107 P. 399 (1910).

By filing of a plat and selling of lots with reference thereto, dedicating and grantor was estopped from revoking dedication of any streets marked thereon. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

Where owner of land plats streets and blocks, dedicating streets to public, and plat shows a strip of sand beach between platted streets, etc., and an abutting lake, beach was not dedicated. *Deffenbaugh v. Washington Water Power Co.*, 24 Idaho 514, 135 P. 247 (1913).

While property owners, abutting on street which predecessors in title had dedicated to city or state for use as such, owned fee of land

to center of street, the city or state had a complete right to use of such land for street purposes. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Title of Municipality.

Effect of recording plat was to vest in city determinable fee for public use of surface of street. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

Where portion of street was vacated in recorded plat, city could not convey fee therein to owner of abutting land not in plat. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

Validation of Dedication.

A statute validating existing plats and a statute providing that an acknowledgment and recording of plats was equivalent to a deed in fee simple of such portion of premises platted as were set apart for streets or other public use impressed upon the plat theretofore filed a dedication to the public of streets outlined in such plat with the same effect as though dedication had been originally placed upon such plat. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

50-1313. Dedication must be accepted. — No street or alley or highway hereafter dedicated by the owner to the public shall be deemed a public street, highway or alley, or be under the use or control of said city or highway district unless the dedication shall be accepted and confirmed by the city council or by the commissioners of the highway district. An acceptance imposes no obligation or liability upon the city council or highway district until the street, highway or alley is declared to be open for public travel. [1967, ch. 429, § 231, p. 1249; am. 1978, ch. 78, § 2, p. 153; am. 1992, ch. 55, § 2, p. 160.]

STATUTORY NOTES

Cross References. — Recordation and dedication of highways, § 40-2302.

Effective Dates. — Section 3 of S.L. 1978,

ch. 78 declared an emergency. Approved March 10, 1978.

JUDICIAL DECISIONS

ANALYSIS

Creation of public road.

Statutory scheme governing dedication.

Creation of Public Road.

In a quiet title action in which plaintiffs, residents of subdivision, sought to enjoin defendant from using two roads for access to his

residence, defendant did not show that road and 60-foot easement he used to gain access to his property were public access roads, nor were the requirements under this section and

§ 50-1309 for the creation of a public road met. *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000).

Statutory Scheme Governing Dedication.

The statutory scheme governing the dedication of real property to the public involves two steps, the first of which is an offer by the owner to "dedicate" the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is

evidenced by the acknowledgement and recording of a plat under § 50-1312, and the acceptance by action of a public body "accepting" and "confirming" the "dedication," as required by this section. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

Cited in: *Pugmire v. Johnson*, 102 Idaho 882, 643 P.2d 832 (1982); *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Liability from five-year use.
Private driveways.
Spasmodic travel.
Title defective.

Liability From Five-Year Use.

Where a street had been used by the public and worked by the city for at least five years, the city, by reason of the implied invitation to the public to use it as a street, became liable for injury to a traveler from obstruction negligently placed therein. *Gallup v. Bliss*, 44 Idaho 756, 262 P. 154 (1927).

Private Driveways.

Private driveways used by public within municipality were subject to municipal regulation for safety of public, whether dedicated or accepted by ordinance. *Crossler v. Safeway Stores*, 51 Idaho 413, 6 P.2d 151 (1931).

Spasmodic Travel.

Strip of land did not become a public street

by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years and the presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

Title Defective.

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

50-1314. Enforcing execution of plat — Assessment of costs. —

Whenever the owners of any tract of land have divided and sold or conveyed five (5) or more parts thereof, or invested the public with any right therein, and have failed and neglected to execute and file a plat for record, as provided in the thirteen (13) foregoing sections of this act, the county recorder [recorder] shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat; if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat within thirty (30) days after the issuance of such notice, the recorder shall cause to be made a plat of such tract and any surveying necessary therefor. Said plat shall be prepared in accordance with requirements in sections 50-1301 through 50-1325[, Idaho Code], and in addition, be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record, and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves.

A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the next session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount pro rata upon all several lots or parcels of said subdivided tract; said assessment shall be collected with, and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover from the said original owners or proprietors, said cost and expense of preparing and recording said plat. [1967, ch. 429, § 232, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler for clarity and to correct the statutory citation style.

For meaning of “this act”, see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

Estoppel.

The mortgagor was estopped from arguing that the replat of the property was invalid because it did not contain the owners' signatures, and was not prepared and filed in accordance with this section, where the mortgagor was responsible for getting the replat

properly recorded, acquiesced in the recording procedure and accepted the benefit of the increased saleability, and only challenged its validity when default on the purchase agreement was imminent. *Williams Lake Lands, Inc. v. LeMoyne Dev., Inc.*, 108 Idaho 826, 702 P.2d 864 (Ct. App. 1985).

50-1315. Existing plats validated. — None of the provisions of sections 50-1301 through 50-1325, Idaho Code, shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in manner of form of acknowledgment or certificate. Provided, however:

- (1) When plats have been accepted and recorded for a period of five (5) years and said plats include public streets that were never laid out and constructed to the standards of the appropriate public highway agency, said public street may be classified as public right of way; and
- (2) Public rights of way for vehicular traffic included in plats which would not conform to current highway standards of the appropriate public highway agency regarding alignments and access locations which, if developed, would result in an unsafe traffic condition, shall be modified or reconfigured in order to meet current standards before access permits to the public right of way are issued. [1967, ch. 429, § 233, p. 1249; am. 1992, ch. 262, § 5, p. 778; am. 1993, ch. 412, § 9, p. 1505.]

JUDICIAL DECISIONS

ANALYSIS

Merger.
Statutory scheme governing dedication.

Merger.

Where the federal survey system did not constitute a legal subdivision of property, the trial judge did not err in finding that three separate parcels had merged into a single parcel of land, that the presence of two roads on the property did not render the property non-contiguous, and that plaintiff's property constituted an unplatted, contiguous tract of land that was subject to defendant county's subdivision ordinance. *Robbins v. County of Blaine*, 134 Idaho 113, 996 P.2d 813 (2000).

Statutory Scheme Governing Dedication.

The statutory scheme governing the dedication of real property to the public involves

two steps, the first of which is an offer by the owner to "dedicate" the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is evidenced by the acknowledgement and recording of a plat under § 50-1312, and the acceptance by action of a public body "accepting" and "confirming" the "dedication," as required by § 50-1313. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

Cited in: *Williams Lake Lands, Inc. v. LeMoynes Dev., Inc.*, 108 Idaho 826, 702 P.2d 864 (Ct. App. 1985).

DECISIONS UNDER PRIOR LAW

Validation of Dedication by Validation of Plat.

A statute validating existing plats and a statute providing that an acknowledgment and recording of plats was equivalent to a deed in fee simple of such portion of premises platted as were set apart for streets or other

public use impresses upon the plat theretofore filed a dedication to the public of streets outlined in such plat with the same effect as though dedication had been originally placed upon such plat. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

50-1316. Penalty for selling unplatted lots. — Any person who shall dispose of or offer for sale any lots in any city or county until the plat thereof has been duly acknowledged and recorded, as provided in sections 50-1301 through 50-1325[, Idaho Code], shall forfeit and pay one hundred dollars (\$100) for each lot and part of a lot sold or disposed of or offered for sale. [1967, ch. 429, § 234, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

Contracts Not Invalidated.

The legislature did not intend for this section to invalidate contracts for the sale of realty because of the vendor's failure to record the plat to lots or portions thereof sold or offered for sale; the language of the section does not prohibit the act of selling lots of an unrecorded plat nor does it mandate that the

vendor must record the plat prior to contracting for the sale of the realty, but rather only mandates the forfeiture of a set sum if the vendor contracts for the sale of the realty without first acknowledging and recording the plat. *Cox v. Mountain Vistas, Inc.*, 102 Idaho 714, 639 P.2d 12 (1981).

50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing. — Whenever any person, persons, firm, association or corporation interested in any city which if unincorporated, or which, if incorporated, is not exercising its corporate functions, or interested in any platted and subdivided tract or acreage outside the limits of any incorpo-

rated city, may desire to vacate any lot, tract, public street, public right-of-way, private road, common, plot or any part thereof in any such city, it shall be lawful to petition the board of county commissioners of the county where such property is located, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated and the names of the persons to be particularly affected thereby; which petition shall be filed with the appropriate county or highway district clerk and notice of the pendency of said petition shall be given for a period of thirty (30) days by written notice thereof, containing a description of the property to be vacated, posted in three (3) public or conspicuous places in said city, and also within the limits of said platted acreage, or in the event such property is located within a county in which there is published a newspaper, as defined by law, such notice shall also be published in such newspaper, once a week for two (2) successive weeks. Provided, however, when a public street or public right-of-way is located within the boundary of a highway district, the commissioners of the highway district shall assume the authority to vacate said public street or public right-of-way. Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted. [1967, ch. 429, § 235, p. 1249; am. 1992, ch. 262, § 6, p. 778; am. 1997, ch. 190, § 10, p. 517; am. 1998, ch. 220, § 4, p. 753.]

JUDICIAL DECISIONS

Cited in: Boise City ex rel. Amyx v. Fails, 94 Idaho 840, 499 P.2d 326 (1972).

DECISIONS UNDER PRIOR LAW

Method Exclusive.

Design and object of those who plat tracts of land was that streets and alleys so platted were intended to give increased value to adjacent lots, and dedication of such streets and alleys to public use cannot be withdrawn at whim or caprice of person who dedicates them, or his grantees. Boise City v. Hon, 14 Idaho 272, 94 P. 167 (1908).

When dedication of street was made by filing plat in proper office and selling lots with reference to it, only way title to said land can revert was by having same vacated in manner provided by law. Hanson v. Proffer, 23 Idaho 705, 132 P. 573 (1913).

50-1318. In absence of opposition — Grant of petition — Restrictions. — If no opposition be made to such petition or application within the said thirty (30) day period, the board of county commissioners shall vacate the same, with such restrictions as they may deem reasonable and for the public good. [1967, ch. 429, § 236, p. 1249.]

50-1319. In presence of opposition — Continuance of application — Hearing — When petition granted. — If opposition be made thereto, such application shall be heard by the appropriate board of county commissioners or highway district commissioners at a time fixed by said board, at which time, if the objector shall consent to said vacation, or if the petitioner shall produce to the board of county commissioners the petition of two-thirds (2/3) of the property holders of lawful age in said town, or owning two-thirds

(2/3) of the tracts in such platted and subdivided acreage, the said board of county commissioners may proceed to hear and determine upon said application, and may if in their opinion justice requires it, grant the prayer of the petitioner, in whole or in part. [1967, ch. 429, § 237, p. 1249; am. 1992, ch. 262, § 7, p. 778.]

50-1320. Vesting of title on vacation. — The part so vacated, if it be a lot or tract, shall vest in the rightful owner, who may have the title thereof according to law; or if a public square or common, the property may vest in the proper county, or if in a city, the property shall vest in the council for the use of such city, and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be; or if the same be a street, all right and title thereto shall be distributed in accordance with section 50-31[, Idaho Code]. [1967, ch. 429, § 238, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limitation on rule — Prerequisites to order of vacation. — No vacation of a public street, public right of way or any part thereof having been duly accepted and recorded as part of a plat or subdivided tract shall take place unless the consent of the adjoining owners be obtained in writing and delivered to the public highway agency having jurisdiction over said public street or public right of way. Such public street or public right of way may, nevertheless, be vacated without such consent of the owners of the property abutting upon such public street or public right of way when such public street or public right of way has not been opened or used by the public for a period of five (5) years and when such nonconsenting owner or owners have access to his, her or their property from some other public street, public right of way or private road. However, before such order of vacation can be entered it must appear to the satisfaction of the public highway agency that the owner or owners of the property abutting said public street or public right of way have been served with notice of the proposed abandonment in the same manner and for the same time as is now or may hereafter be provided for the service of the summons in an action at law. Any vacation of lands within one (1) mile of a city shall require notification and consent of the city. [1967, ch. 429, § 239, p. 1249; am. 1992, ch. 262, § 8, p. 778.]

50-1322. Appeal from order granting or denying application to vacate. — Whenever the governing body shall grant the application, or refuse the application of any person or persons, made as provided for the vacation of any lot, tract, street, common, plat or any part thereof, an appeal may be taken from any act, order or proceeding of the board made or had

pursuant to by any person aggrieved thereby within twenty (20) days after the first publication or posting of the statement as required by section 31-819, Idaho Code. Procedure upon such appeal shall be in all respects the same as prescribed in sections 31-1510, 31-1511 and 31-1515, Idaho Code. [1967, ch. 429, § 240, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — Sections 31-1510 and 31-1511, referred to in this section, were repealed, by S.L. 1993, ch. 103, § 1, effective July 1, 1993. Section 31-1515 was repealed by S.L. 1995, ch. 61, § 5, effective January 1, 1995.

50-1323. Limitation of actions to establish adverse rights or question validity of vacation. — Every action brought to establish adverse rights or interests in the affected property or to determine the invalidity of any action by which any lot, tract, street, common, plat or any part thereof has been vacated must be brought within six (6) months after the effective date of this act [April 12, 1967] or within six (6) months after a certified copy of the ordinance, resolution or order of vacation has been filed for record in the office of the county recorder of the county in which the affected property is located. Any person, firm or corporation having any objection thereto may bring such action. [1967, ch. 429, § 241, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 50-102. The bracketed insertion was added by the compiler for clarity.

50-1324. Recording vacations. — (1) Before a vacation of a plat can be recorded, the county treasurer must certify that all taxes due are paid and such certification is recorded as part of the records of the vacation. The treasurer shall withhold the certification only when property taxes are due, but not paid.

(2) Upon payment of the appropriate fee therefor, the county recorder of each county shall index and record, in the same manner as other instruments affecting the title to real property, a certified copy of each ordinance, resolution or order by which any lot, tract, public street, public right of way, private road, easement, common, plat or any part thereof has been vacated. Such certification shall be by the officer having custody of the original document and shall certify that the copy is a full, true and correct copy of the original. [1967, ch. 429, § 242, p. 1249; am. 1992, ch. 262, § 9, p. 778; am. 1994, ch. 79, § 1, p. 181.]

50-1325. Easements — Vacation of. — Easements shall be vacated in the same manner as streets. [1967, ch. 429, § 243, p. 1249.]

50-1326. All plats to bear a sanitary restriction — Submission of plans and specifications of water and sewage systems to state department of environmental quality — Removal or reimposition of sanitary restriction. — For the purposes of sections 50-1326 through

50-1329, Idaho Code, any plat of a subdivision filed in accordance with chapter 13, title 50, Idaho Code, or in accordance with county ordinances adopted pursuant to chapter 38, title 31, Idaho Code, shall be subject to the sanitary restriction. There shall be placed upon the face of every plat prior to it being recorded by the county clerk and recorder, the sanitary restriction, except such sanitary restriction may be omitted from the plat, or if it appears on the plat, may be indorsed by the county clerk and recorder as sanitary restriction satisfied, when there is recorded at the time of the filing of the plat, or at any time subsequent thereto, a duly acknowledged certificate of approval issued by the director of the department of environmental quality, for either public water and/or public sewer facilities, or individual water and/or sewage facilities for the particular land. The owner shall have the obligation of submitting to the director all information necessary concerning the proposed facilities referred to. Such certificate of approval may be issued for the subdivision or any portion thereof. Until the sanitary restrictions have been satisfied by the filing of said certificate of approval, no owner shall construct any building or shelter on said premises which necessitates the supplying of water or sewage facilities for persons using such premises. The sanitary restrictions shall be reimposed on the plat upon the issuance of a certificate of disapproval after notice to the responsible party and an opportunity to appeal, if construction is not in compliance with approved plans and specifications, or the facilities do not substantially comply with regulatory standards in effect at the time of facility construction. [I.C., § 50-1326, as added by 1971, ch. 329, § 2, p. 1294; am. 1989, ch. 233, § 1, p. 569; am. 2001, ch. 103, § 90, p. 253.]

STATUTORY NOTES

Cross References. — Powers and duties of director of department of environmental quality, § 39-105.

JUDICIAL DECISIONS

Sufficiency of Evidence.

Approval of subdivision plats by the department of health and the board of county commissioners combined with testimony before the district court as to the care taken in the planning of the subdivision provided the evidence necessary to a finding approving the subdivision plats, notwithstanding failure of

the commissioners to obtain a geological survey to determine the potential for pollution of ground water by the proposed sewer systems. *Brown v. Schafer*, 96 Idaho 599, 532 P.2d 941 (1975).

Cited in: *Stephens v. City of Notus*, 101 Idaho 101, 609 P.2d 168 (1980).

50-1327. Filing or recording of noncomplying map or plat prohibited. — No person shall offer for recording, or cause to be recorded, a plat not containing a sanitary restriction, unless there is submitted for record at the same time the certificate of approval from the director of the department of environmental quality as required in section 50-1326, Idaho Code. The filing and recording of a noncomplying plat shall in no way invalidate a title conveyed thereunder. [I.C., § 50-1327, as added by 1971,

ch. 329, § 3, p. 1294; am. 1989, ch. 102, § 3, p. 235; am. 1989, ch. 233, § 2, p. 569; am. 2001, ch. 103, § 91, p. 253.]

STATUTORY NOTES

Amendments. — This section was amended by two 1989 acts which appear to be compatible and have been compiled together. The 1989 amendment, by ch. 102, substituted “50-1326” for “15-1326” in the first sentence.

The 1989 amendment, by ch. 233, in the first sentence added “approval from” following “the certificate of” and substituted “director of the department of health and welfare” for “state board of health” preceding “as required in section 50-1326.”

50-1328. Rules for the administration and enforcement of sanitary restriction. — The state board of environmental quality may adopt rules pursuant to section 39-107(8), Idaho Code, including adoption of sanitary standards necessary for administration and enforcement, pursuant to section 39-108, Idaho Code, of sections 50-1326 through 50-1329, Idaho Code. The rules and standards shall provide the basis for approving subdivision plats for various types of water and sewage facilities, both public and individual, and may be related to size of lots, contour of land, porosity of soil, ground water level, pollution of water, type of construction of water and sewage facilities, and other factors for the protection of the public health or the environment. [I.C., § 50-1328, as added by 1971, ch. 329, § 4, p. 1294; am. 1989, ch. 233, § 3, p. 569; am. 2001, ch. 103, § 92, p. 253.]

STATUTORY NOTES

Compiler’s Notes. — Following the amendment of § 39-107 by S.L. 2000, chapter 182, the reference in the first sentence in this section should be to § 39-107(7) Idaho Code.

50-1329. Violation a misdemeanor. — Any person, firm or corporation who constructs, or causes to be constructed, a building or shelter prior to the satisfaction of the sanitary restriction, or who installs or causes to be installed water and sewer facilities thereon prior to the issuance of a certificate of approval by the director of the department of environmental quality, shall be guilty of a misdemeanor. Each and every day that such activities are carried on in violation of this section shall constitute a separate and distinct offense. [I.C., § 50-1329, as added by 1971, ch. 329, § 5, p. 1294; am. 1989, ch. 233, § 4, p. 569; am. 2001, ch. 103, § 93, p. 253.]

STATUTORY NOTES

Cross References. — Powers and duties of director of department of environmental quality, § 39-105.
Effective Dates. — Section 6 of S.L. 1971, ch. 329, provided that the act should be in full force and effect on and after July 1, 1971.
Punishment for misdemeanor where not provided, § 18-113.

50-1330. Jurisdiction of public streets and public rights of way within a highway district. — In a county with highway districts, the highway district board of commissioners in such district shall have exclusive general supervisory authority over all public streets and public rights of way

under their jurisdiction within their district, excluding public streets and public rights of way located inside of an incorporated city that has a functioning street department, with full power to establish design standards, establish use standards and regulations in accordance with the provisions of title 49, Idaho Code, accept, create, open, widen, extend, relocate, realign, control access to or vacate said public streets and public rights of way. Provided, however, when said public street or public right of way lies within one (1) mile of a city, or the established county/city impact area or adjacent to a platted area within one (1) mile of a city or the established county/city impact area, consent of the city council of the affected city shall be necessary prior to the granting of acceptance or vacation of said public street or public right of way by the highway district board of commissioners. [I.C., § 50-1330, as added by 1983, ch. 233, § 1, p. 636; am. 1992, ch. 262, § 10, p. 778.]

JUDICIAL DECISIONS

ANALYSIS

Functioning street department.
Legislative intent.
Power to vacate streets.

Functioning Street Department.

Where the district court specifically found the city did not have a functioning street department, the highway district had exclusive general supervisory authority to maintain the streets within the highway district. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Legislative Intent.

Since this section was added to the Idaho Code in 1983, and § 40-1323 was added in

1985, the legislature must have intended to preserve the incorporated city's ability to levy taxes and intended to preserve the city's ability to maintain streets within its city limits and to allow a city to exercise this authority only if it has a functioning street department. To interpret it otherwise would effectively make the provisions of this section regarding incorporated cities with functioning street departments a nullity. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

Power to Vacate Streets.

Under this section, a highway district had exclusive power to vacate streets within its boundaries where the city did not have a functioning street department. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

Cited in: *Schneider v. Howe*, 142 Idaho 767, 133 P.3d 1232 (2006).

50-1331. Setting of interior monuments for a subdivision. —

Interior monuments for a subdivision need not be set prior to the recording of the plat of the subdivision if the land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in subsection (1) of section 50-1333, Idaho Code, and if the person subdividing the land furnishes to the governing body of the county or city which approved the subdivision, a bond or cash deposit guaranteeing the payment of the cost of setting the interior monuments for the subdivision, as provided in section 50-1332, Idaho Code. [I.C., § 50-1331, as added by 1987, ch. 227, § 1, p. 482.]

50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work. — (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure of such professional land surveyor to set such monuments, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference monument in relation to the platted location of the corner. [I.C., § 50-1332, as added by 1987, ch. 227, § 1, p. 482; am. 1997, ch. 190, § 11, p. 517; am. 1998, ch. 220, § 5, p. 753.]

50-1333. Recording of plats with only exterior monuments referenced. — (1) If the person subdividing any land has complied with subsection (1) of section 50-1332, Idaho Code, the professional land surveyor may prepare the plat of the subdivision for recording with only the exterior monuments set thereon when submitted for recording. There shall be a certification on the plat by the professional land surveyor that the interior monuments for the subdivision will be set in accordance with section 50-1303, Idaho Code, on or before a specified date and the said interior monuments will be referenced on the plat with a unique symbol. The time for setting the interior monuments shall not exceed one (1) calendar year

from the date the plat is recorded or as determined by the governing body of such city or county.

(2) After the interior monuments for a subdivision have been set as provided in the certification required on the plat in subsection (1) of this section, the professional land surveyor performing such work shall, within five (5) days after completion of such work, give written notice to the person subdividing the land involved, the surveyor or engineer of the city or county by which the subdivision was approved and the governing body of such city or county.

(3) In the event that the person subdividing the land involved fails or refuses to authorize the payment for interior monumentation, the professional land surveyor may request payment from the governing body, and upon inspection by the governing body of the interior monumentation, the governing body shall pay the professional land surveyor from moneys held. [I.C., § 50-1333, as added by 1987, ch. 227, § 1, p. 482; am. 1997, ch. 190, § 12, p. 517.]

50-1334. Review of water systems encompassed by plats. — Whenever any plat is subject to the terms and requirements of sections 50-1326 through 50-1329, Idaho Code, no person shall offer for recording, or cause to be recorded, a plat unless he or she shall have certified that at least one (1) of the following is the case:

(1) The individual lots described in the plat will not be served by any water system common to one (1) or more of the lots, but will be served by individual wells.

(2) All of the lots in the plat will be eligible to receive water service from an existing water system, be the water system municipal, a water district, a public utility subject to the regulation of the Idaho public utilities commission, or a mutual or nonprofit water company, and the existing water distribution system has agreed in writing to serve all of the lots in the subdivision.

(3) If a new water system will come into being to serve the subdivision, that it has or will have sufficient contributed capital to allow the water system's wells, springboxes, reservoirs and mains to be constructed to provide service without further connection charges or fees to the landowners of the lots, except for connection of laterals, meters or other plant exclusively for the lot owner's own use.

Failure to comply with this section is a misdemeanor subject to the provisions of section 50-1329, Idaho Code. The certification must be filed or recorded as part of the plat document preserved for public inspection. Property owners in the area encompassed by the plat will be entitled to the benefits of the third provision of this section when that option is chosen. [I.C., § 50-1334, as added by 1990, ch. 178, § 1, p. 377.]

STATUTORY NOTES

Cross References. — Public utilities commission, § 61-201 et seq.

Punishment for misdemeanor where not provided, § 18-113.

CHAPTER 14

CONVEYANCE OF PROPERTY

SECTION.	SECTION.
50-1401. Real property owned by cities — Method of conveyance or exchange.	50-1406. Disposal of land acquired by foreclosure — Excess proceeds.
50-1402. Declaration of value of property.	50-1407. Leases.
50-1403. Disposition after hearing.	50-1408. Disposal of land acquired by foreclosure — Excess proceeds.
50-1404. Terms of sale.	50-1409. Leases.
50-1405. Conveyance — Disposition of proceeds.	

50-1401. Real property owned by cities — Method of conveyance or exchange. — It is the intent of this chapter that cities of the state of Idaho shall have general authority to manage real property owned by the city in ways which the judgment of the city council of each city deems to be in the public interest. The city council shall have the power to sell, exchange or convey, by good and sufficient deed or other appropriate instrument in writing, any real property owned by the city which is underutilized or which is not used for public purposes. [1967, ch. 429, § 244, p. 1249; am. 2001, ch. 331, § 1, p. 1161.]

STATUTORY NOTES

Cross References. — Oil and gas leases, § 47-1401 et seq.
Transfer of property to other units of government, §§ 67-2322 to 67-2325.
Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.
Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.
Estoppel.

Construction.
Statutory regulations providing for transfer of title to land held by city for building purposes did not prohibit a transfer, but only set forth method and manner necessary for a conveyance. Lloyd Crystal Post No. 20 v. Jefferson County, 72 Idaho 158, 237 P.2d 348 (1951).
Estoppel.
City was estopped from asserting title to premises conveyed by quitclaim deed to legion post after resolution by city council, even

though no ordinance was passed or election held, if legion post spent large sums in maintaining and improving premises. Lloyd Crystal Post No. 20 v. Jefferson County, 72 Idaho 158, 237 P.2d 348 (1951).
Estoppel did not apply to municipality if conveyance of title was prohibited, but it did apply, if municipality was allowed to convey title, even though certain statutory requirements for passing title were not met. Lloyd Crystal Post No. 20 v. Jefferson County, 72 Idaho 158, 237 P.2d 348 (1951).

50-1402. Declaration of value of property. — Whenever the city council proposes to convey, exchange or offer for sale any real property, it shall first declare the value or minimum price, if any, it intends to receive as

a result of such conveyance or exchange. The city council may contract for or provide that the property be appraised under such terms and conditions as may be deemed appropriate by the city council. The declaration, either in the form of a minimum dollar value, or an explanation of an intended exchange or conveyance for other than monetary consideration shall be made on the record at a public meeting of the council. The city council may also declare that the subject property will be offered for sale without establishing a minimum price.

Following a declaration of intent to sell or exchange real property, the clerk of the city shall publish a summary of the action taken by the city council in the official newspaper of the city and provide notice of a public hearing before the city council. Notice of the public hearing concerning the proposed exchange or conveyance shall be published in the official newspaper of the city at least fourteen (14) days prior to the date of the hearing. [1967, ch. 429, § 245, p. 1249; am. 2001, ch. 331, § 2, p. 1161.]

50-1403. Disposition after hearing. — After a public hearing has been conducted, the city council may proceed to exchange, convey or offer for sale the real property in question, subject to the restrictions of section 50-1401, Idaho Code. The city council shall be governed by the following provisions:

(1) When the property is offered for sale, the property shall be sold at a public auction to the highest bidder and no bids shall be accepted for less than the minimum declared value previously recorded on the record at a public meeting of the council, provided however, if no bids are received, the city council shall have the authority to sell such property as it deems in the best interest of the city.

(2) When it is determined by the city council to be in the city's best interest that the property be offered for exchange, the council may do all things necessary to exchange any property owned by the city for real property of equal value pursuant to terms which shall be a matter of public record.

(3) When property is purchased, donated or otherwise conveyed to a city and the city has previously used federal funding to acquire the property, with funds specifically designated for the purpose of assisting low- to moderate-income families with decent, safe, affordable housing opportunities, the property may be sold, donated or otherwise conveyed directly to a low- to moderate-income family, so long as the sale or conveyance is consistent with the applicable federal regulations under which the property was obtained initially. In such instances, the city council shall pass an ordinance stating:

- (a) That the property was acquired, in whole, with federal funds;
- (b) That the property is to be sold or otherwise conveyed to a low- to moderate-income family;
- (c) That the sale or conveyance is consistent with all applicable federal, state or local statutes, laws, regulations and policies; and
- (d) That the property may be offered for sale, donation or otherwise conveyed immediately upon the passing of the ordinance.

(4) When it is determined by the city council to be in the city’s best interest that a transfer or conveyance be made, the city council may, by ordinance duly enacted, authorize the transfer or conveyance of any real property owned by such city to any tax supported governmental unit, with or without consideration.

(5) When it is determined by the city council to be in the city’s best interest, the city may transfer property to a trustee for security purposes, or for purposes of accommodating a transaction, or for funding of construction of capital facilities on city owned property. [I.C., § 50-1403, as added by 2001, ch. 331, § 4, p. 1161.]

STATUTORY NOTES

Prior Laws. — Former § 50-1403, which comprised 1967, ch. 429, § 246, p. 1249; am. 1967 (1st E. S.), ch. 10, § 1, p. 36, was repealed by S.L. 2001, ch. 331, § 3.

JUDICIAL DECISIONS

City Streets.

Under Idaho law, a city has no authority to convey a portion of a city street. In Idaho, city streets from side to side and end to end belong to the public and are held by the municipality in trust for the use of the public. In the absence of a statute expressly permitting it to

do so, a city may not make a valid contract permanently alienating a part of a city street or permitting a permanent encroachment and obstruction thereon, limiting the use of the street by the public. *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

50-1404. Terms of sale. — Real property may be sold for cash or on contract for a period not exceeding ten (10) years, with a rate of interest on all deferred payments as determined by the city council. The title to all property sold on contract shall be retained in the name of the city until full payment has been made by the purchaser. Any property sold by the city council under the provisions of this section either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held a record title to the property so sold. The city council shall have authority to cancel any contract of sale pursuant to law, and retain all payments paid thereon, if the purchaser shall fail to comply with any of the terms of the contract. The city council may, by agreement with the purchaser, modify or extend any of the terms of any contract of sale, but the total period shall not exceed ten (10) years. [I.C., § 50-1404, as added by 2001, ch. 331, § 5, p. 1161.]

STATUTORY NOTES

Prior Laws. — Former § 50-1404, which comprised 1967, ch. 429, § 247, p. 1249; am. 1973, ch. 60, § 1, p. 101, was repealed by S.L. 2001, ch. 331, § 3.

50-1405. Conveyance — Disposition of proceeds. — The proceeds received from the sale or exchange of property shall be utilized in a manner consistent with provisions of law regarding revenues received by the city. [I.C., § 50-1405, as added by 2001, ch. 331, § 6, p. 1161.]

STATUTORY NOTES

Prior Laws. — Former § 50-1405, which p. 121; am. 1991, ch. 152, § 1, p. 361, was comprised 1967, ch. 429, § 248, p. 1249; am. repealed by S.L. 2001, ch. 331, § 3. 1971, ch. 53, § 1, p. 125; am. 1973, ch. 76, § 1,

50-1406. Disposal of land acquired by foreclosure — Excess proceeds. — Should real property be acquired as the result of a foreclosure of any improvement lien, or where a deed has been made and executed by the owner to the city in satisfaction of an improvement lien, and thereafter bring more than is assessed against the same, together with costs and expenses, then the proceeds shall be paid to the owner if his address is known, otherwise, to be placed in the improvement fund for the benefit of which the property was impressed with the lien. [I.C., § 50-1406, as added by 2001, ch. 331, § 7, p. 1161.]

STATUTORY NOTES

Prior Laws. — Former § 50-1406, which comprised 1967, ch. 429, § 249, p. 1249, was repealed by S.L. 2001, ch. 331, § 3.

50-1407. Leases. — The mayor and council may, by resolution, authorize the lease of any real or personal property not otherwise needed for city purposes, upon such terms as the city council determines may be just and equitable. [I.C., § 50-1407, as added by 2001, ch. 331, § 8, p. 1161.]

STATUTORY NOTES

Prior Laws. — Former § 50-1407, which comprised 1967, ch. 429, § 250, p. 1249, was repealed by S.L. 2001, ch. 331, § 3.

50-1408. Disposal of land acquired by foreclosure — Excess proceeds. — Should the property acquired as the result of a foreclosure of any improvement lien, or where a deed has been made and executed by the owner to the city in consideration of such improvement lien, bring more than is assessed against the same together with costs and expenses, then such excess shall be paid to the owner if his address is known, otherwise, to be placed in the improvement fund for the benefit of which such property was impressed with such lien. [1967, ch. 429, § 251, p. 1249.]

50-1409. Leases. — The mayor and council may, by resolution, authorize the lease of any property not needed for city purposes, upon such terms as may be just and equitable. The provisions of sections 50-1401 through 50-1409[, Idaho Code,] shall not apply to the vacation or discontinuance of streets, highways, avenues, alleys or lanes annulled, vacated or discontinued. Provided, that the council of a city, upon a vote of one half (1/2) plus one (1) of the members of the full council, may set apart portions of the public parks, playgrounds or other grounds to be used from time to time for athletic contests, golf links, agricultural exhibits, ball parks, fairs, rodeos, swimming pools and other amusements, and for military units of the state of

Idaho or the United States, and may, upon a vote of one half (1/2) plus one (1) of the members of the full council, make and enter into proper contracts with organizations and associations necessary and proper to carry out the purposes of this provision. Provided, that a city shall not be liable for any damage by reason of any accident occurring on the parks and lands set apart for such purposes, except for gross negligence on the part of the city or its officers or agents, and provided further, that an entrance or other fee may be charged sufficient to pay the expense of maintaining and operating the ground. [1967, ch. 429, § 252, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the second sentence was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

ANALYSIS

Passage of resolution.

Power discretionary.

Property not needed for city purposes.

Passage of Resolution.

The clerk of the city council testified that a motion authorizing the lease of former hospital to state for use as correctional facility was presented at the December 20, 1989, meeting of the city council and that the city council took a final vote at that time. The trial court concluded that the oral motion made and passed by the city council amounted, in substance, to a "resolution" within the meaning of § 50-902 prior to execution of the lease. The trial court did not abuse its discretion in admitting the copy of the resolution into evidence. *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992).

Power Discretionary.

This section permits a municipality to lease city property "not needed for city purposes, upon such terms as may be just and equitable"; this power to lease is a purely discretion-

ary function entrusted to the elected officials of the municipality and, absent a clear abuse of that discretion, any decision made thereunder will not be overturned on appeal. *Bopp v. City of Sandpoint*, 110 Idaho 488, 716 P.2d 1260 (1986).

Property Not Needed for City Purposes.

Lease between telephone and telegraph company and the city of property being used for city hall and police station to telephone company was valid, and this section which authorizes "the lease of any property not needed for city purposes" does not prohibit a city council by resolution from determining that the leased property was not needed for city purposes in the present or future and was subject to city's right of occupation during transitional period prior to obtaining new premises. *Mountain States Tel. & Tel. Co. v. City of Boise*, 95 Idaho 264, 506 P.2d 832 (1973).

CHAPTER 15

POLICEMAN'S RETIREMENT FUND

SECTION.

50-1501. Purpose stated.

50-1502. Definitions.

50-1503. Establishment of retirement fund.

50-1504. Board of police retirement fund commissioners — Election — Term of office — Duties.

50-1505. Policeman's retirement fund.

50-1506. Appropriation of fund.

50-1507. Administration of fund.

50-1508. Actions by and against board.

SECTION.

50-1509. Employees of board.

50-1510. Personal liability of board members or their employees.

50-1511. Audit of claims.

50-1512. Tax levy — Salary deductions.

50-1513. Chairman of board — Secretaries — Reports.

50-1514. Retirement of policemen — Retirement benefits — Leave of absence.

SECTION.

- 50-1515. Resignation of policemen — Refund of deductions.
50-1516. Retirement for disability — Death benefits — Funeral benefits.
50-1517. Benefits exempt from legal process.
50-1518. Construction of statute.
50-1519. Rotary expense fund.
50-1520. Insurance of risks.

SECTION.

- 50-1521. Application of statute.
50-1522. Separability.
50-1523. False claims — Penalty.
50-1524. Authority to create policeman's retirement fund terminated.
50-1525. Mandatory actuarial study.
50-1526. Making a false claim — Misdemeanor.

50-1501. Purpose stated. — Retirement, with continuance of pay for themselves, provision for dependents and pay during temporary disability, and the encouragement of long tenure in police service of paid policemen becoming aged or disabled in the service of the state or any of its cities, is hereby declared to be a public purpose of joint concern to the state and each of its cities in the protection of lives and conservation of property and essential to the maintenance of competent and efficient personnel in police service. [1967, ch. 429, § 253, p. 1249.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

Cited in: *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

50-1502. Definitions. — The following are definitions of terms used in sections 50-1501 through 50-1524, Idaho Code:

(a) "Paid policeman" means any individual who is on the payroll of any city in the state of Idaho and who devotes his or her principal time of employment to the care, operation or maintenance of a regularly constituted police department of such city;

(b) "Industrial accident board" means the board as authorized and created under the provisions of chapter 5, title 72, Idaho Code, or as the same may be hereafter amended;

(c) "Workers' Compensation Law" means the Workers' Compensation Law as authorized and created under title 72, Idaho Code, or as the same may hereafter be amended;

(d) "Twenty-five years active service" — an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city in a regularly constituted police department, and has actually been carried on the payroll for twenty-five (25) years;

(e) "Five years continuous service, ten years continuous service, fifteen years continuous service" — an individual who has been employed by a regularly constituted police department for a period of five (5) years, ten (10) years, or fifteen (15) years continuously, without having engaged in any other gainful occupation;

(f) "Leave of absence" means a period of time which a paid policeman shall have been out of the service of said police department of the city of which he was a member, and who, for that like period of time was off the payrolls thereof;

(g) "Mandatory retirement at age sixty-five" — retirement to become mandatory when age of sixty-five (65) years has been reached;

(h) The meaning of the term "incapacitated in a degree which prohibits efficient service" means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid policeman during any occasion when his said services as a policeman shall be necessary;

(i) "Twenty-five years of accumulated service" — an individual who has been employed by a regularly constituted police department without having engaged in any other gainful occupation and has had twenty-five (25) years of accumulated service with the same police department and has been carried on the payrolls of such department for that period of accumulated time. [1967, ch. 429, § 254, p. 1249; am. 1993, ch. 350, § 1, p. 1295.]

STATUTORY NOTES

Compiler's Notes. — Section 1 of S.L. 1969, ch. 250 amended this section to read as follows: "The following are definitions of terms used in sections 50-1501 through 50-1524:

"(a) 'Paid policeman' means any individual who is on the payroll of any city in the state of Idaho and who devotes his or her principal time of employment to the care, operation or maintenance of a regularly constituted police department of such city;

"(b) 'Industrial accident board' means the board as authorized and created under the provisions of chapter 5 of title 72, or as the same may be hereafter amended;

"(c) 'Workmen's Compensation Law' means the Workmen's Compensation Law as authorized and created under title 72, or as the same may hereafter be amended;

"(d) 'Twenty years active service' — an individual whose principal means of livelihood for the period of twenty years has been through employment by a city in a regularly constituted police department, and has actually been carried on the payroll for twenty years;

"(e) 'Five years continuous service, ten years continuous service, fifteen years continuous service' — an individual who has been employed by a regularly constituted police department for a period of five years, ten years, or fifteen years continuously, without having engaged in any other gainful occupation;

"(f) 'Leave of absence' means a period of time which a paid policeman shall have been

out of the service of said police department of the city of which he was a member, and who, for that like period of time was off the payrolls thereof;

"(g) 'Mandatory retirement at age sixty-five' — retirement to become mandatory when age of sixty-five years has been reached;

"(h) The meaning of the term 'incapacitated in a degree which prohibits efficient service' means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid policeman during any occasion when his said services as a policeman shall be necessary;

"(i) 'Twenty years of accumulated service' — an individual who has been employed by a regularly constituted police department without having engaged in any other gainful occupation and has (been) had twenty years of accumulated service with the same police department and has been carried on the payrolls of such department for that period of accumulated time."

However, chapter 250 is probably invalid. Such chapter, which was Senate Bill 1178, was passed by the senate as set out above. The bill in the house was amended by striking out the amendment to the section in its entirety. The bill was then returned to the senate but was not submitted to the senate for the approval of the amendments. The bill, without such amendments, was then enrolled and sent to the governor for signature.

Pursuant to § 72-502, references to the "industrial accident board" and "board" are deemed to be references to the "industrial commission."

50-1503. Establishment of retirement fund. — The city council of any city in the state of Idaho may, in accordance with sections 50-1501 through 50-1524[, Idaho Code], establish a “policeman’s retirement fund” providing, that when such fund shall have been established, as hereinafter provided, it shall continue to function except that the legislature of the state of Idaho may abolish it. [1967, ch. 429, § 255, p. 1249.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1504. Board of police retirement fund commissioners — Election — Term of office — Duties. — The city council of any city, having elected to establish a policeman’s retirement fund, together with three (3) members of the police department, shall constitute the board of police retirement fund commissioners. Each police department member, to be eligible for board membership, must be (a) a participating member of the fund; and (b) either on active duty or retired from the department and drawing benefits from the fund. For the purposes of this section “participating member” means any active member of the police department who contributes to the fund, or any retired member of the police department who receives benefits from the fund. The three (3) members from the police department shall be elected at an election held every two (2) years after the adoption of the provisions of sections 50-1501 through 50-1524, Idaho Code, and in the manner herein provided. In the event that the number of participating members eligible for board membership is limited to two (2) or fewer, a member may hold more than one (1) position on the board simultaneously.

Not more than thirty (30) nor less than fifteen (15) days preceding the date fixed by law for general city elections, written notice of the nomination of any participating member of said police department for membership on said board may be filed with the secretary thereof. Each petition of nomination shall be signed by not less than three (3) participating members of said police department, and nothing herein contained shall prevent any participating member of a police department from signing more than three (3) petitions of nomination. Said election shall be held on a date fixed by the secretary of the board, and shall not be less than five (5) days nor more than ten (10) days before the date fixed by law for the election as aforesaid. Notices of the dates upon which said petitions may be filed and of the date fixed for the election of members to said board shall be given by the secretary by posting written notices thereof in a prominent place in the police headquarters of said city and by mailing written notices to each participating fund member. For the purpose of said election, the secretary shall prepare and furnish by mail printed or typewritten ballots in the usual form, containing the names of all persons regularly nominated for membership. Each participating member of said police department shall be entitled to vote in person or by mail for three (3) persons as members of said board.

The chief of police of the department shall appoint two (2) members of the department, one (1) of which may be the secretary of the fund, to act as clerks at the election, which shall open at 8 o'clock A.M., and remain open so long thereafter, not exceeding twelve (12) hours, as will afford an opportunity for each person entitled to vote. The three (3) nominees receiving the highest number of votes in ballots cast in person and by mail in said election shall be declared elected and their terms shall commence on the same date as that of the mayor of said city.

Said board shall provide for the disbursement of such retirement fund and shall designate the beneficiaries thereof as provided in sections 50-1501 through 50-1524, Idaho Code. [1967, ch. 429, § 256, p. 1249; am. 1987, ch. 73, § 1, p. 143.]

JUDICIAL DECISIONS

Constitutionality.

In disbursing the retirement fund to the beneficiaries, as provided in this section, the commissioners are not discharging an unconstitutional liability of the city to a private association, but are disbursing public funds

from a public trust for a public purpose, i.e., compensation of faithful public servants for services rendered over the years. *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

50-1505. Policeman's retirement fund. — There is hereby created a special fund in the treasury of the city to be designated and known as the policeman's retirement fund for the purpose of providing retirement pay and other benefits for paid policemen, as defined herein, becoming aged or disabled while in the public police service of said city and also providing for their dependents. Such fund shall consist of all moneys accruing under the provisions hereof, all appropriations thereto, all contributions to said fund, donations, properties, and securities acquired by investment or otherwise, and interest earned, shall, commencing with the effective date of such fund, become a part thereof. [1967, ch. 429, § 257, p. 1249.]

50-1506. Appropriation of fund. — All moneys coming into the said fund shall be continuously appropriated for the objects, uses and purposes provided herein by sections 50-1501 through 50-1524[, Idaho Code,] and to pay all or any costs and expenses of administration thereof by the said board of police retirement fund commissioners. [1967, ch. 429, § 258, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1507. Administration of fund. — The policeman's retirement fund shall be administered by the chairman of the board of police retirement fund commissioners. [1967, ch. 429, § 259, p. 1249.]

50-1508. Actions by and against board. — The said board of police retirement fund commissioners shall have the power to sue or be sued in all

courts of the state in all matters arising out of the administration, management and enforcement of the provisions of sections 50-1501 through 50-1524[, Idaho Code]. [1967, ch. 429, § 260, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Form of Action.

Where the board denied the application of one under disability retirement for permanent retirement on the ground that, having previously been retired, the enactment of

§ 50-2116(i) (now § 50-1516(h)) did not affect his rights, his action for declaratory judgment was the proper form of action. *Engen v. James*, 92 Idaho 690, 448 P.2d 977 (1969).

50-1509. Employees of board. — The said board of police retirement fund commissioners shall have power to engage assistants, experts, accountants, clerks and other employees which may be found necessary to carry out the provisions of sections 50-1501 through 50-1524[, Idaho Code], the same to be paid out of said retirement fund. [1967, ch. 429, § 261, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1510. Personal liability of board members or their employees. — The board of police retirement fund commissioners shall not, nor shall any person employed by any commissioners, be personally liable in his private capacity for or on account of any act performed or entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of said retirement fund. [1967, ch. 429, § 262, p. 1249.]

50-1511. Audit of claims. — All claims against said fund shall be examined, audited and allowed in the manner now provided or hereafter provided for by law for claims against any city. [1967, ch. 429, § 263, p. 1249.]

50-1512. Tax levy — Salary deductions. — Any city having established a policeman's retirement fund may levy a tax of not to exceed eight hundredths per cent (.08%) of market value for assessment purposes of property within the corporate limits of the city, except where pursuant to section 50-1525, Idaho Code, it is found that the levy is not sufficient to meet the fund's future liability, in which case the levy may be increased to provide for the actuarial soundness of the fund. Said taxes shall be placed by the city

treasurer in a fund to be known as the "policeman's retirement fund." Sums certain, as determined by the governing body, not to exceed eight per cent (8%) per month, may be deducted from the salary of each police officer and placed in said "policeman's retirement fund" by the treasurer. When all claims against the fund have been satisfied, the authority to levy according to this section shall terminate. [1967, ch. 429, § 264, p. 1249; am. 1971, ch. 26, § 6, p. 68; am. 1985, ch. 223, § 1, p. 536; am. 1996, ch. 208, § 12, p. 658; am. 1996, ch. 322, § 53, p. 1029.]

STATUTORY NOTES

Cross References. — Deductions from wages for pension funds, § 50-1016.

Amendments. — This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendments, by ch. 208, and ch. 322, both deleted the second sentence of this

section which read: "The levy, as authorized herein, shall be exempt from the provisions of section 63-2220, Idaho Code."

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

50-1513. Chairman of board — Secretaries — Reports. — The mayor of the city shall be ex-officio chairman of the board of police retirement fund commissioners and the members of the board shall elect the other necessary officers. The secretary of the board shall make a semiannual report to the city council as to the condition of the said "policeman's retirement fund:" their receipts and disbursements in the accounts of same, a complete list of the beneficiaries of the said fund and a list of the amount paid to each of said persons. The city treasurer shall, from the records of his office, furnish the secretary with any pertinent or necessary information which may be needful or necessary to compile such report or to furnish the board with the proper information: all reports to be written, signed and dated by the secretary. [1967, ch. 429, § 265, p. 1249.]

50-1514. Retirement of policemen — Retirement benefits — Leave of absence. — (a) Whenever any person shall have been duly appointed, selected and sworn in as a member in any capacity or rank whatsoever of a regularly constituted police department of the city which may hereafter be subject to the provisions of this chapter, and shall have reached the age of sixty (60) years, shall be retired upon his written application to the board of retirement fund commissioners, and every other member of such a police department who reaches the age of sixty-five (65), or any member who, after reaching the age of sixty (60) years, continues in a regular capacity with that police department and thereafter becomes physically or mentally incapacitated to a degree which prevents efficient service, shall by the order and direction of the board be retired from further service with that city police department. When any person shall have served not less than twenty-five (25) years accumulatively with the same city police department, he may should he so desire have the right to retire at that time, provided he has not reached the age of sixty-five (65) years, and provided further, that whenever that person eligible to retire upon completion of twenty-five (25) years of accumulated service so elects, he may, upon

application to the board of police retirement fund commissioners, remain in active service as long as his physical condition permits, or until reaching the age of sixty-five (65) years. When the board issues an order of retirement, the order shall terminate and end the services of a person in the police department, except in cases of extreme emergency as determined by the board of police retirement fund commissioners in cooperation with the chief of police of that city, and the person to be retired shall thereafter during his lifetime be paid from the retirement fund a yearly sum, equal to one-half ($1/2$) of the average annual salary received by the person during the five (5) highest salary years of his last ten (10) years of service next preceding the date of retirement; provided, however, in cases where the retirement plan was approved by ordinance prior to April 1, 1947, a yearly retirement sum shall be paid which is equal to one-half ($1/2$) of the amount of salary attached to the rank which he held in the police department of the city for a period of one (1) year next preceding the date of retirement, both of which retirement sums shall be adjusted in proportion to any cost-of-living adjustments made to the salaries of active employees. Provided further, that where a retirement plan was approved by ordinance prior to April 1, 1947, upon completion of twenty (20) years of accumulated service a person subject to this chapter may apply to the board of police retirement fund commissioners for a reduced yearly retirement sum equal to the percentage of full benefits arrived at by dividing the number of years served by twenty-five (25). This percentage reduction in benefits shall be consistent throughout the person's retirement period.

(b) The period of time during which any paid policeman who is entitled to retire under the provisions of this chapter, is out of the service with the constituted police department of that city, while on authorized leave of absence, other than leave of absence granted a policeman by reason of injury or illness, and during which period of time the policeman is not carried on the payroll of the police department of the city, shall not be counted as applying to accumulative service under provisions of this chapter, except that this shall not apply to leave of absence granted to any policeman of any city for the purpose of service in the armed forces of the United States. The period of time prior to granting a leave of absence, other than those granted due to injury or illness, or for the purpose of serving in the armed forces of the United States, when the policeman was actually on the payroll of the police department of the city, and period of time the policeman is actually on the payroll of the police department after his return from leave of absence, shall be computed to establish length of accumulated service. Also, providing that any paid policeman coming under the provisions of this chapter, who shall leave the service of the police department and has been repaid any part or all of the moneys paid by him through payroll deductions to the retirement fund, shall, if and when returning to service of that police department, repay the amount of money he was reimbursed, under the provisions of this chapter to the policeman's retirement fund before becoming eligible to receive retirement pay under the provisions of this chapter. [1967, ch. 429, § 266, p. 1249; am. 1970, ch. 157, § 1, p. 481; am. 1974, ch. 103, § 1, p. 1208; am. 1981, ch. 4, § 1, p. 8.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1969, ch. 250, also purported to amend this section, but, since it was passed by the House in a different version than was passed by the

Senate, it was deemed invalid.

Effective Dates. — Section 2 of S.L. 1973, ch. 103 declared an emergency. Approved March 27, 1974.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Disability Retirement.

The requirements for retirement under former similar section did not preclude the eligibility for retirement of those who com-

plied with the requirements of § 50-2116(i) (now § 50-1516(h)). *Engen v. James*, 92 Idaho 690, 448 P.2d 977 (1969).

50-1515. Resignation of policemen — Refund of deductions. — A policeman who has been employed by a regularly constituted police department for a period of less than five (5) continuous years shall, upon termination of such employment, and upon application to the board of police retirement fund commissioners, be refunded one fourth (1/4) of the moneys deducted from his salary and placed in the police retirement fund. The amount to be refunded upon the application of a policeman who has been employed by said police department for a period of not less than five (5) years continuously shall be one third (1/3) of the moneys deducted from his salary and placed in the police retirement fund; for not less than ten (10) years continuous employment with said police department, one half (1/2) of the moneys deducted from his salary and placed in the police retirement fund shall, upon application, be refunded; and after having completed fifteen (15) years of continuous service with said police department, all moneys deducted from his salary and placed in the police retirement fund shall be refunded upon application of such policeman upon termination. [1967, ch. 429, § 267, p. 1249.]

50-1516. Retirement for disability — Death benefits — Funeral benefits. — No person shall be retired as provided in the above sections unless the member shall comply with the qualifications set out and provided by this chapter:

(a) Any paid police member incapacitated by injury or by illness as a result of the performance of the member's official duties as a paid member of a police department shall be retired so long as the disability shall continue in a degree which prevents efficient service and during the disability shall be paid from the retirement fund a disability benefit as follows:

(1) For disability attributable wholly to service as a paid police member, a monthly sum equal to one twenty-fourth (1/24) of the amount of the annual salary attached to the rank which the member held in the police department for a period of one (1) year next preceding the date of retirement; provided, however, that the benefits may be reduced by the board of police retirement fund commissioners commensurate to the extent of the disability and the person's income earning capacity;

(2) For disability attributable only in part to service as a paid police member, a monthly disability benefit in an amount to be fixed by the board of police retirement fund commissioners, but commensurate with the extent of proportion the service-connected disability relates to that person's preexisting injury or infirmity, the board may increase or decrease such monthly benefits whenever the impairment in the person's earning capacity warrants an increase or decrease, but in no event shall a monthly benefit paid to the person exceed the benefit provided under subparagraph (1) above;

(3) Provided, however, that if any paid police member is entitled to receive compensation under the Workmen's Compensation Law of the state of Idaho as it now exists, or shall hereafter be amended, the amount payable under this act shall be reduced by the amount to which the paid police member is entitled under the Workmen's Compensation Law;

(4) The board of police retirement fund commissioners shall require medical examinations of all applicants for retirement by reason of disability, and shall, at their discretion, require periodic medical examinations of persons receiving a disability retirement allowance. The board shall prescribe general rules for medical examination required hereunder, and may provide for the discontinuance of any disability retirement allowance and forfeiture of all rights under this act for any person who refuses to submit to such an examination;

(5) The decision of the board as to eligibility allowances or benefits shall be final;

(6) When a disability beneficiary is determined by the board to be not incapacitated in a degree which prevents efficient service, the member's disability retirement allowance shall be canceled forthwith;

(7) Such a person, who for any reason is not reinstated in the service of the member's department, shall receive separation benefits according to the member's entitlement, as provided under section 50-1515, Idaho Code.

(b) In event a paid police member is killed or sustains injury, from which death results, while in the performance of the member's duty or from causes disconnected with the member's official duties but during the period of the member's service, and leaves surviving the member a spouse or a minor child or minor children, or, in the event the member's spouse has predeceased the member, the member's minor child or children, shall be paid from the retirement fund a yearly sum equal to one-half (1/2) of the amount of the salary attached to the rank the member held in the police department of the city for a period of one (1) year next preceding the date of injury or death. In event a surviving spouse of a police member so killed, or whose death so results, shall thereafter die and there shall be at the time of death, a minor child or minor children of the deceased police member under the age of eighteen (18) years, the payments aforesaid shall be paid, for the sole benefit of the minor child or children under and until reaching the age of eighteen (18) years; provided, however, that any sums payable to any surviving spouse or minor child or children of any police member under this act shall be reduced by any sum to which the surviving spouse or minor child or children may be entitled under the provisions of the Workmen's Compensation Law of the state of Idaho.

(c) In event a paid police member, retired on retirement pay, shall die and leave surviving the member a surviving spouse, who was the member's spouse for over five (5) years immediately prior to the member's death, but no minor children, the spouse shall receive an amount equal to three-fourths (3/4) of the retirement or benefit pay of the member prior to the member's death, adjusted in proportion to any cost-of-living adjustments made to the salaries of active employees, but only during the spouse's lifetime.

(d) In event a paid police member, retired on retirement pay, shall die and leave surviving the member a spouse who was the member's spouse for over five (5) years immediately prior to the member's death or a minor child or minor children, the surviving spouse, or, in the event the member's spouse has predeceased the member, the member's minor child or children, shall be paid the retirement pay to which the deceased police member was eligible, and if the member's surviving spouse thereafter dies the full retirement pay shall be paid to the child or children until they reach the age of eighteen (18) years.

(e) In the event any paid police member shall die within three (3) months, from and as a result of injuries received in performance of duty or from causes disconnected with the member's official duties but during the period of the member's service and shall at the time of the member's death be unmarried but shall leave surviving the member a dependent father or mother, the retirement or benefit pay to which the member would have been entitled thereunder shall be paid fifty per cent (50%) to each of the surviving parents during the continuance of his or her natural life.

(f) In addition to the foregoing, at the death of any paid police member from whatever cause, the fund shall pay the sum of one hundred dollars (\$100) as funeral expenses.

(g) Any police member, father, mother, surviving spouse, child or children of a police member entitled to compensation under the Workmen's Compensation Law shall draw benefits under provisions of this chapter only to the extent that the benefits under this chapter exceed those to which the member shall be entitled under the Workmen's Compensation Law of the state of Idaho.

(h) When a police member has been disabled and when the period of the member's disability combined with the member's prior service as a police member makes the member eligible for retirement under the provisions of this chapter, the member may upon application to the board be retired at one-half (1/2) the rate of pay applicable for the job classification at the time of disability, or its equivalent, which the member held at the time of disability which pay shall be adjusted in proportion to any cost-of-living adjustments made to the pay of active employees. [1967, ch. 429, § 268, p. 1249; am. 1970, ch. 157, § 2, p. 481; am. 1976, ch. 287, § 1, p. 990; am. 1981, ch. 4, § 2, p. 8; am. 1992, ch. 41, § 1, p. 140.]

STATUTORY NOTES

Cross Reference. — Worker's compensation law, § 72-101 et seq.

Compiler's Notes. — Section 3 of S.L. 1969, ch. 250 also purported to amend this section, but, since it was passed by the House

in a different version than was passed by the Senate, it was deemed invalid.

For meaning of "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

Effect of Repeal on Existing Rights.

The repeal of former provision allowing retirement at half-pay of disabled policeman did not affect the rights of one who had become entitled to retirement and applied

therefor prior to such repeal, as the existing rights of such a one could not be taken away by a later act of the legislature. *Engen v. James*, 92 Idaho 690, 448 P.2d 977 (1969).

50-1517. Benefits exempt from legal process. — No benefits or payments payable under the provisions of sections 50-1501 through 50-1524[, Idaho Code,] shall be subject to execution, nor assignable, nor shall be hypothecated or in any manner encumbered. [1967, ch. 429, § 269, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1518. Construction of statute. — The provisions of this chapter shall be liberally construed, with the object of promotion of justice and the welfare of the persons subject to its provisions. [1967, ch. 429, § 270, p. 1249.]

50-1519. Rotary expense fund. — The provisions of sections 67-2018, 67-2019, 67-2020 and 67-2021, Idaho Code, are hereby expressly declared applicable to the provisions of sections 50-1501 through 50-1524[, Idaho Code]. [1967, ch. 429, § 271, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1520. Insurance of risks. — In event the board of police retirement fund commissioners shall determine that there are risks arising under the terms of sections 50-1501 through 50-1524[, Idaho Code,] which may be made the subject of insurance against loss to the fund created herein, said commission is hereby authorized at its discretion, to insure such risks. In event of such insurance, the premiums therefor shall be paid from the fund created hereby as other claims are paid; provided, that such insurance shall not in any event be insurance of any individual but exclusively insurance of the fund itself against loss. [1967, ch. 429, § 272, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1521. Application of statute. — No paid policeman shall be retired under section 50-1514[, Idaho Code,] prior to January 1, 1950, unless he

shall be discharged from service because of his incapacity in a degree which prohibits efficient service as defined in subdivision (h) of section 50-1502[, Idaho Code]. The provisions of sections 50-1501 through 50-1524[, Idaho Code,] shall apply only to persons now employed or hereafter to be employed as paid policemen. [1967, ch. 429, § 273, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-1522. Separability. — If any clause, section or provision of sections 50-1501 through 50-1524[, Idaho Code,] be found to be unconstitutional, the remainder of sections 50-1501 through 50-1524[, Idaho Code,] shall remain in full force and effect, notwithstanding such invalidity. [1967, ch. 429, § 274, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-1523. False claims — Penalty. — Any person making a false claim for allowance of benefits or payment of money under sections 50-1501 through 50-1524[, Idaho Code], knowing the same to be false, shall be deemed guilty of presentation of a false claim against the state and shall be punished as provided by law. [1967, ch. 429, § 275, p. 1249.]

STATUTORY NOTES

Cross References. ⁶ Making a false claim, § 50-1526. tion was added by the compiler to correct the statutory citation style.

Compiler's Notes. — The bracketed inser-

50-1524. Authority to create policeman's retirement fund terminated. — From and after the effective date of this act [April 12, 1967], no city shall establish a policeman's retirement fund: provided, however, that any policeman's retirement fund, established under the provisions of sections 50-1501 through 50-1524[, Idaho Code,] and which is now in effect, shall not be invalidated. Provided, further, except as in this section hereinafter otherwise provided, that no person, who shall be hereafter employed as a paid policeman in a city which has a policeman's retirement fund at the effective date of this act, shall participate in the policeman's retirement fund. Any person hereafter employed by a police department shall be eligible to participate in the public employee's retirement system except as in this section hereinafter otherwise provided. Any city having an existing policeman's retirement fund may require, by ordinance, that all of its paid policemen shall participate in its policeman's retirement fund. No paid policeman employed in a city which has elected by ordinance to require all its paid policemen to participate in its policeman's retirement fund shall

be eligible to participate in the public employee's retirement system. [1967, ch. 429, § 276, p. 1249; am. 1969, ch. 307, § 1, p. 944; am. 1970, ch. 24, § 1, p. 51.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to provide clarity and to correct the statutory citation style.

Effective Dates. — Section 2 of S.L. 1969,

ch. 307 declared an emergency. Approved March 27, 1969.

Section 2 of S.L. 1970, ch. 24 declared an emergency. Approved February 17, 1970.

50-1525. Mandatory actuarial study. — Any city establishing and maintaining a policeman's retirement fund pursuant to the provisions of this chapter shall, at its own expense, conduct an actuarial study for the purpose of determining the actuarial soundness of such fund. Commencing January 1, 1991, actuarial studies required hereunder shall be conducted within four (4) years of the last actuarial study and each four (4) years thereafter. Copies of such studies shall be submitted to the secretary of state for the state of Idaho and to the secretary of the local police retirement fund board. [I.C., § 50-1525, as added by 1971, ch. 26, § 7, p. 68; am. 1990, ch. 128, § 1, p. 298.]

STATUTORY NOTES

Compiler's Notes. — Section 8 of S.L. 1971, ch. 26 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of remaining portions of this act".

Effective Dates. — Section 9 of S.L. 1971, ch. 26 provided that the act should be in full force and effect on and after July 1, 1971.

50-1526. Making a false claim — Misdemeanor. — Any person making a false claim for allowance of benefits or payment of money under the provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor, and shall be punished pursuant to the provisions of section 18-113, Idaho Code. [I.C., § 50-1526, as added by 1993, ch. 349, § 1, p. 1294.]

CHAPTER 16

CIVIL SERVICE

SECTION.

- 50-1601. Civil service commission — Appointment — Qualifications — Manner of abolishing commission.
- 50-1602. Departments governed by civil service — Classified civil service lists.
- 50-1603. Rules by commission.
- 50-1604. Examinations — Qualifications of

SECTION.

- applicants — Rehires — Causes for removal, discharge or suspension of incumbents.
- 50-1605. Appointment to positions — Certificate of eligibles — Reexamination.
- 50-1606. Promotion for merit.
- 50-1607. Employees of six months when ordinance becomes effective.

SECTION.

50-1608. Temporary appointments.
50-1609. Removals — Suspensions — Appeals — Hearings.

SECTION.

50-1610. Removals due to reduction of force.

50-1601. Civil service commission — Appointment — Qualifications — Manner of abolishing commission. — To provide a means whereby employees of the cities of the state of Idaho may be selected, retained and promoted on the basis of merit and performance of duties, thus effecting economy and efficiency in the administration of city government, the city council of any city may, by ordinance, provide for the creation of a civil service system under the provisions herein set forth.

(A) To create such system, the mayor with the advice and consent of the council shall appoint three (3) persons from among the qualified electors of the city to be designated the civil service commission.

(B) One member of said civil service commission shall serve a two (2) year term, another member shall serve a four (4) year term, and a third member shall serve a six (6) year term. Each second year thereafter, one (1) member shall in like manner be appointed for a term of six (6) years, to take the place of the member whose term next expires. If a vacancy occurs in the civil service commission, such vacancy for the balance of the unexpired term shall be filled as in the first instance.

Any city having created a civil service system shall not thereafter abolish such system except as herein provided: notice of date, time and place of first reading of the proposed ordinance to abolish such system shall be published in one (1) issue of the official newspaper of the city not less than ten (10) days immediately preceding the first reading of the proposed ordinance; and, such ordinance shall not be passed unless the same is read at length on three (3) different days at least seven (7) days apart. [1967, ch. 429, § 277, p. 1249.]

STATUTORY NOTES

Cross References. — Worker's compensation applies, § 72-205.

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive,

and chs. 48, 49 of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

Firefighters.

The contract the city of Boise made with the Idaho national guard (IDANG) to provide air rescue fire fighting (ARFF) services at the Boise municipal airport did not violate the Idaho constitution or the Idaho civil service act; however, the firefighters were entitled to collectively bargain in anticipation of the

city's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and, by refusing to negotiate with the union, the city violated the collective bargaining act. International Ass'n of Firefighters Local No. 672 v. Boise City, 136 Idaho 162, 30 P.3d 940 (2001).

50-1602. Departments governed by civil service — Classified civil service lists. — The council of each city creating a civil service system shall, by ordinance, determine which departments therein shall be included within the classified civil service system to be governed by the civil service

rules and regulations. No appointments shall be made except under and according to the rules and regulations as adopted by resolution of the council.

The appointing authority of each department, subject to the rules and regulations of the civil service system, shall appoint all officers, employees or agents classified under the civil service rules and regulations, from the classified civil service list furnished by the civil service commission, and in like manner fill all vacancies. [1967, ch. 429, § 278, p. 1249; am. 1973, ch. 287, § 1, p. 611.]

50-1603. Rules by commission. — The civil service commission shall make, and is hereby empowered to make, all necessary rules and regulations to carry out the purposes of the civil service system and for examinations, appointments and promotions. All such rules and regulations shall be printed by the civil service commission for distribution. [1967, ch. 429, § 279, p. 1249.]

50-1604. Examinations — Qualifications of applicants — Rehires — Causes for removal, discharge or suspension of incumbents. —

(1) Except as provided in subsection (3) of this section, all applicants for places of employment in the classified civil service shall be subject to examination, which shall be public competitive and free and shall be held at such times and places as the civil service commission shall from time to time determine. Such examinations shall be for the purpose of determining the qualifications of applicants for positions and shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek appointment.

(2) The governing body of each city, having created a civil service commission, shall provide a job description for each civil service position of the city and shall determine and establish the standards and qualifications therefor to be met by each applicant before appointment.

(3) Any applicant who, while in good standing, voluntarily terminated his or her employment with the agency with whom an appointment is sought may, upon written request to and approval from the appointing officer and in accordance with the written policy of the civil service commission, be rehired without taking an examination provided:

(a) The applicant is otherwise qualified for the position; and

(b) The written request for rehire is physically delivered, mailed or electronically transferred to the appointing officer within such time as provided by the written policy of the civil service commission.

(4) All incumbents and applicants thereafter appointed shall hold office, place, position or employment only during good behavior, and any such person may be removed, discharged, suspended without pay, demoted, reduced in rank, deprived of vacation privileges or other special privileges for any of the following reasons, subject to the determination of the facts in each case by the commission:

(a) Incompetency, inefficiency or inattention to, or dereliction of duty;

(b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of

omission or commission tending to injure the public service; willful failure on the part of the employee to properly conduct himself, or any other willful violation of the civil service rules and regulations;

(c) Mental or physical unfitness for the position which the employee holds;

(d) Dishonest, disgraceful, immoral or prejudicial conduct;

(e) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee or which prevents the employee from properly performing the functions and duties of any position under civil service;

(f) Conviction of a felony or a misdemeanor involving moral turpitude;

(g) Any other act or failure to act, which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [1967, ch. 429, § 280, p. 1249; am. 2002, ch. 51, § 1, p. 117.]

JUDICIAL DECISIONS

Cited in: International Ass'n of Firefighters Local No. 672 v. Boise City, 136 Idaho 162, 30 P.3d 940 (2001).

RESEARCH REFERENCES

A.L.R. — Preemployment conduct as ground for discharge of civil service employee having permanent status. 4 A.L.R.3d 488.

Determination as to good faith in abolition of public service or employment subject to civil service or merit system. 87 A.L.R.3d 1165.

Sexual misconduct or irregularity as

amounting to conduct unbecoming an officer, justifying officer's demotion or removal or suspension from duty. 9 A.L.R.4th 614.

First amendment protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of free speech. 106 A.L.R. Fed. 396.

50-1605. Appointment to positions — Certificate of eligibles — Reexamination. — When a position in the classified civil service is to be filled, the appointing authority shall notify the civil service commissioner and the commission shall, as soon as possible, certify the names of three (3) or so many as there be if less than three (3) on the eligible list, to the appointing officer, provided, the said commission shall always certify the persons having the highest standing in the eligible list for the position to be filled, and each position shall be filled by one (1) of the persons certified by the said commission. All appointments shall be probationary for such periods as may be prescribed by the civil service commission. All persons not appointed shall be restored to their relative positions on the eligible list.

All persons, having been on the eligible list for two (2) years without appointment, shall be removed therefrom and can only be returned thereto upon regular examination. [1967, ch. 429, § 281, p. 1249.]

50-1606. Promotion for merit. — The civil service commission shall provide for promotions within the departments under the classified civil service on the basis of ascertained merit, seniority in service, standing

obtained by competitive examination, and in all cases where practicable, provide that vacancies shall be filled by promotion from among such members of the next lower rank as submit themselves for examination for promotion. The civil service commission shall certify the names of not more than three (3) applicants having the highest rating to the appointing authority for each promotion. [1967, ch. 429, § 282, p. 1249.]

50-1607. Employees of six months when ordinance becomes effective. — All persons who are and have been continuously in the employ of the city, for at least six (6) months next prior to the effective date of the civil service ordinance, shall retain their respective employment, subject to removal or suspension in accordance with the rules and regulations of the civil service commission. [1967, ch. 429, § 283, p. 1249.]

50-1608. Temporary appointments. — The appointing authority of each department under the classified civil service, by and with the advice and consent of the civil service commission, may employ any person for temporary work without making such appointment from the certified list; but under no circumstances shall such temporary employee be appointed to a permanent position unless he shall have been duly certified by the civil service commission as in other cases. [1967, ch. 429, § 284, p. 1249.]

50-1609. Removals — Suspensions — Appeals — Hearings. — All persons in the classified civil service shall be subject to suspension from office or employment by the head of the department for misconduct, incompetency or failure to properly observe the rules of the department. Upon suspension by the head of the department or accusation by the appointing power, any citizen or taxpayer, a written statement of such suspension or accusation, in general terms, shall be served upon the accused and a duplicate filed with the commission; provided, the head of the department may suspend a member pending the confirmation of the suspension by the appointing power, which confirmation must be within three (3) days. The finding of the civil service commission upon the said charges shall be certified to the head of the department and shall forthwith be enforced and followed by him. The aggrieved party shall, however, have the right within ten (10) days from the time of his removal, suspension, demotion or discharge as the case may be, to file with the commission a written demand for an investigation. In conducting such investigation, the commission shall be confined to the determination of the question as to whether such removal, suspension, demotion or discharge was made for political or religious reasons, or was made in good faith and for cause. All investigations made by the commission pursuant to the provisions of this section shall be by public hearing after reasonable notice to the accused of the time and place of such hearing. At such hearing the accused shall be afforded an opportunity of appearing in person or by counsel and presenting his defense. If such judgment or order be upheld by a majority of the commission, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. The

court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner; provided, however, that such hearing shall be confined to the determination as to whether the judgment or order of removal, discharge, demotion or suspension by the commission, was made in good faith and for cause, and no appeal to such court shall be taken except upon such ground or grounds. [1967, ch. 429, § 285, p. 1249.]

JUDICIAL DECISIONS

ANALYSIS

Findings of commission.

Judicial review.

Summary appeal in district court.

Findings of Commission.

The civil service commissioner made findings which complied on their face with this section, where the commission determined that the police officer used excessive force when disciplining his stepchildren, causing injuries to those children, that his actions demonstrated an inability to control his temper and an inability to react appropriately as a result thereof, that his inability to control his temper cast serious doubt upon his ability to perform his duties as a police officer, and that no evidence was presented suggesting he was discharged for political or religious reasons. *Dexter v. Idaho Falls City Police Dep't*, 113 Idaho 179, 742 P.2d 434 (Ct. App. 1987).

Judicial Review.

On judicial review of a civil service commission determination, the district court is required to conduct a full review of the whole record and, where the commission's conclusions are unsupported by substantial evidence, its function encompasses stating, both for the benefit of the parties and the supreme court, its reasoning and conclusions which very well may but need not take the form of

findings and conclusions. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

The character of the commission, the roles committed to it by statute, and the manner in which the commission functioned serve to vary the standard of judicial review. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

Summary Appeal in District Court.

Where the trial court heard oral argument of counsel, which consumed 30 minutes, following which the district court, within the confines of his chambers, made his review of the appeal record over a period of time extending from June 27, 1977, to August 25, 1977, it was clear that the district court proceeded in the "summary" manner required by this section, and the procedure was that which the parties envisioned as required by the section and their stipulation. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

Cited in: *Peterson v. City of Pocatello*, 117 Idaho 234, 786 P.2d 1136 (Ct. App. 1990).

50-1610. Removals due to reduction of force. — Nothing in sections 50-1601 through 50-1610[, Idaho Code,] shall prohibit the city council from reducing the force employed, but such reduction shall be effected in inverse order of seniority of employment, and any employee who is removed on this account shall be placed at the head of the eligible list. [1967, ch. 429, § 286, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

CHAPTER 17

LOCAL IMPROVEMENT DISTRICT CODE — GUARANTEE FUND

SECTION.

- 50-1701. Short title.
- 50-1702. Definitions.
- 50-1703. Powers conferred.
- 50-1703A. Local business improvement districts.
- 50-1704. Improvements on railroad tracks or on one side of a street.
- 50-1705. Modified district.
- 50-1706. Initiation of organization of district.
- 50-1706A. Fees.
- 50-1707. Resolution of intention to create district.
- 50-1708. Notice of intention and hearing.
- 50-1709. Protests and hearing.
- 50-1710. Ordinance creating improvement district and procedure for construction bids.
- 50-1711. Limitation on assessments against property.
- 50-1712. Preparation of assessment roll and notice of hearing thereon.
- 50-1713. Notice of hearing on assessment roll.
- 50-1714. Hearing objections to assessment roll and confirmation.
- 50-1715. Confirmation of assessment roll.
- 50-1716. Notice and payment of assessments.
- 50-1717. Installment docket.
- 50-1718. Appeal procedure — Exclusive remedy.
- 50-1719. Additional improvements.
- 50-1720. Reassessment of benefits.
- 50-1721. Lien of assessment — Foreclosure.
- 50-1721A. Segregation of assessments.
- 50-1722. Bonds — Registered warrants — Interim warrants.
- 50-1723. Liability of municipality.
- 50-1724. Bond and interest funds.
- 50-1725. Reissue of bonds.
- 50-1726. Rights against assessments.
- 50-1727. Publication and conclusiveness of proceedings.
- 50-1728. Consolidated local improvement districts authorized.
- 50-1729 — 50-1737. [Repealed.]
- 50-1738. Delinquent installments.
- 50-1739. Delinquent certificates.

SECTION.

- 50-1740. Delinquent certificate register.
- 50-1741. Assignment of delinquent certificates.
- 50-1742. Form of assignment — Assignment by purchaser.
- 50-1743. Redemption.
- 50-1744. Deed.
- 50-1745. Notice of expiration of time of redemption.
- 50-1746. Proof of notice.
- 50-1747. Effect of deed as evidence.
- 50-1748. Delinquency certificate for subsequent instalments.
- 50-1749. Fees of treasurer.
- 50-1750. Suit to quiet title.
- 50-1751. Sale of property deeded to municipality.
- 50-1752. Sale of property after maturity of bonds.
- 50-1753. Disposition of funds.
- 50-1754. Delinquent certificate not assignable during pendency of action.
- 50-1755. Duties of officers.
- 50-1756 — 50-1761. [Repealed.]
- 50-1762. Local improvement guarantee fund — Creation of fund.
- 50-1763. Bonds, warrants and coupons, when paid out of fund — Nonpayment for want of funds — Interest.
- 50-1764. Subrogation of municipality to rights of payee — Surplus funds — Payment into fund — Preferences.
- 50-1765. Maintenance and operation and sources of fund.
- 50-1766. Replenishment of fund — Warrants — Issuance against fund — Tax levy.
- 50-1767. Bonds and warrants — Revenues from which payable.
- 50-1768. Bonds payable from fund.
- 50-1769. Excess in fund — Disposition.
- 50-1770. Unpatented lands — Assessment for improvements.
- 50-1771. Reserve fund authorized.
- 50-1772. Commercially reasonable credit assurances.

50-1701. Short title. — Chapter 17, title 50, Idaho Code, shall be known and cited as the “Local Improvement District Code.” [I.C., § 50-1701, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former §§ 50-1701 — 50-1727, which comprised S.L. 1967, ch. 429,

§§ 287-314; am. 1968 (2nd E.S.), ch. 21, §§ 1-3; am. 1969, ch. 41, §§ 1-3, 6; am. 1969,

ch. 181, § 1; am. 1970, ch. 99, § 1; am. 1970, ch. 133, §§ 14, 15; am. 1971, ch. 159, § 1; am. 1974, ch. 55, § 1; am. 1975, ch. 93, §§ 1, 2; am. 1975, ch. 168, §§ 1-3, were repealed by S.L. 1976, ch. 160, § 1.

Prior to such repeal, section 472 of S.L. 1967, ch. 429 had repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Compiler's Notes. — Section 3 of S.L. 1976, ch. 160 read: "All local improvement districts heretofore created or attempted to be created, and all assessments heretofore levied therein or attempted to be levied therein, which have not heretofore been adjudicated invalid, and all notices, assessments and proceedings taken in relation thereto whether void, defective or invalid, in all cases where

the improvements contemplated have been made or contracted for, are hereby ratified, validated and confirmed and made sufficient to the same extent as if the same were perfected in the first instance. All acts and proceedings of any municipality had under or by virtue of the local improvement district code, and all contracts heretofore or hereafter made, and all warrants and bonds heretofore or hereafter issued pursuant to said acts and proceedings, are hereby ratified, validated and confirmed. All sections of the local improvement district code not specifically repealed herein are hereby ratified, validated and confirmed and made sufficient to the same extent as if they had been properly enacted in the first instance."

JUDICIAL DECISIONS

Validation of Void Assessments.

Inasmuch as Idaho Const., Art. XI, § 12 prohibits the imposition of laws imposing new pecuniary liabilities in respect to transactions or considerations already past, Laws 1976, c. 160, § 3, which claims to validate all invalid assessments previously levied, cannot be the basis upon which property owners could be reassessed for improvement project costs in-

curred prior to the time the city acquired jurisdiction to incur such costs. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

Cited in: *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984); *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.

Costs incurred prior to creation of district.

Drainage districts.

Due process.

Statutory creation.

Validity.

Waiver of objections.

Constitutionality.

Provisions of former local improvement district code were not unconstitutional as violative of provision against taking of property without due process of law. *Bell v. City of Moscow*, 48 Idaho 65, 279 P. 1095 (1929); *Wheeler v. City of Caldwell*, 48 Idaho 77, 279 P. 412 (1929).

Costs Incurred Prior to Creation of District.

Inasmuch as a municipality acquired no statutory jurisdiction to incur costs to be assessed against abutting property owners under the 1967 local improvement district code until after the city council had held a hearing for public protests, any costs generated prior to the proper creation of a special improvement district could not be assessed against allegedly affected property owners. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

Drainage Districts.

A drainage district was a local improvement district and because of the mere fact that it was not included within the local improvement code, it does not necessarily follow that it was not a local improvement district, if it was such in fact. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Due Process.

Due process in the organization of a special assessment district and issuance of bonds thereby was afforded by the municipality's notice to all interested parties, hearing before the council, and city's assessment of benefits for the district. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Statutory Creation.

Special improvement districts were purely creatures of statute. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

Validity.

Former sections governing special assessments for street improvements violated no constitutional right of owners of property assessed, as long as benefits continued respectively to equal the individual assessments. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

Paving assessment against abutting property was held not discriminatory because city paved street in front of other property abut-

ting on line of improvement at its own expense. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

Waiver of Objections.

Property owners who failed to object to street assessments and to take advantage of opportunity for hearing before city council could not thereafter question assessment in federal court. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

RESEARCH REFERENCES

Am. Jur. — 70C Am. Jur. 2d, Special or Local Assessments, § 1 et seq.

50-1702. Definitions. — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively given herein.

(a) **Municipality.** Counties, water and/or sewer districts organized pursuant to the provisions of chapter 32, title 42, Idaho Code, highway districts, cities, including but not limited to those working under a special charter which have by such charter accepted the provisions of this code, and any city or like municipality hereafter created or authorized by the legislature unless one or more of the above shall be specifically excepted in any particular section of this code.

(b) **Street or streets.** The entire legal right of way and highways, roads, boulevards, avenues, streets, alleys, courts and all public places within a city, county, highway district, or water and/or sewer district.

(c) **Council.** The board of county commissioners, board of directors of water and/or sewer districts, the board of highway commissioners of any highway district, the mayor and council of all incorporated municipalities as well as any other municipal body or board which may now, or hereafter be authorized by law to do and perform any act in relation to the making of local improvements within any municipality as provided for in this code.

(d) **Clerk, attorney or other municipal officer.** The appropriate and comparable city and county officers with regard to city and county local improvement districts, highway district officers with regard to such highway district local improvement districts, and water and/or sewer district officers in regard to water and/or sewer local improvement districts.

(e) **Engineer.** The official engineer of the municipality or one specially retained for purposes of operating under this code.

(f) **Off-street parking.** All machinery, equipment, materials and appurtenances, including lands, easements, rights of way and buildings required, necessary or useful for the parking of vehicles on lands or places other than public streets.

(g) **Resident owner or resident owners.** The owner of property within, and who resides in a dwelling house situate in whole or in part within the limits of a local improvement district, or a proposed local improvement district; and a corporation, joint stock association, partnership, individual propri-

etor, or other form of business enterprise owning real property, and having its principal place of business, within any such district or proposed district.

(h) Cost and expenses. The contract price of all improvements, including the cost of making improvements within any intersection, together with any costs or expenses incurred for engineering, clerical, printing and legal services as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as shall be considered necessary by the council. [I.C., § 50-1702, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 15-1702 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code", see § 50-1701.

JUDICIAL DECISIONS

Assessment of Costs.

Engineering and design expenses incurred prior to the formation of the local improve-

ment district were properly assessed against the property owners. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

50-1703. Powers conferred. — (a) The governing body of any municipality shall have power to make or cause to be made any one (1) or more or combination of the following improvements:

- (1) To establish grades and lay out, establish, open, extend and widen any local, collector, arterial or other street, sidewalk, alley or off-street parking facility;
- (2) To purchase, acquire, construct, improve, repair, light, grade, pave, repave, surface, resurface, curb, gutter, sewer, drain, landscape and beautify any street, sidewalk or alley;
- (3) To purchase, construct, reconstruct, extend, maintain or repair bridges, sidewalks, crosswalks, driveways, culverts, sanitary sewers, storm sewers, ditches, drains, conduits, flood barriers and channels for sanitary and drainage purposes, or either or both thereof, with inlets or outlets, manholes, catch basins, flush tanks, treatment systems and all other sewer and drainage appurtenances necessary for the comfort, convenience, health and well-being of the inhabitants of the municipality; provided, that any improvements for sanitary sewer facilities shall be constructed so as to conform with the general rules of the Idaho department of environmental quality;
- (4) To construct, reconstruct, extend, maintain, or repair lines, facilities and equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously established municipally-owned electrical distribution system, to a district within the boundaries of the municipality;
- (5) To plant, or cause to be planted, set out, cultivate and maintain lawns, shade trees or other landscaping;
- (6) To cover, fence, safeguard or enclose reservoirs, canals, ditches and watercourses and to construct, reconstruct, extend, line or reline, maintain and repair waterworks, reservoirs, canals, ditches, pipes, mains,

hydrants, and other water facilities for the purpose of supplying water for domestic, irrigation and fire protection purposes, or any of them; regulating, controlling or distributing the same and regulating and controlling water and watercourses leading into the municipality;

(7) To acquire, construct, reconstruct, extend, maintain or repair parking lots or other facilities for the parking of vehicles on or off streets;

(8) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;

(9) To remove any nonconforming existing facility or structure in the areas to be improved;

(10) To construct, reconstruct, extend, maintain or repair optional improvements;

(11) To acquire by purchase, gift, condemnation, or otherwise any real or personal property within the limits of the municipality as in the judgment of the council may be necessary or convenient in order to make any of such improvements or otherwise to carry out the purposes of this chapter;

(12) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;

(13) To construct and install all such structures, equipment and other items and to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any of such improvements in a proper manner;

(14) To purchase, build, construct, reconstruct or otherwise improve parking facilities and all other appurtenances necessary to provide adequate off-street parking, and to that end may acquire real or personal property by purchase, gift, condemnation or otherwise, and may own, possess and maintain such real or personal property within the limits of the municipality as in the judgment of the council may be necessary and convenient for such purposes; and

(15) To acquire, purchase, build, construct or reconstruct irrigation systems, install underground tiling and cover open irrigation ditches.

(b) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the governing body of a municipality may create local improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim or registered warrants and local improvement bonds as provided in this chapter. [I.C., § 50-1703, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 2, p. 722; am. 2001, ch. 103, § 94, p. 253.]

STATUTORY NOTES

Cross References. — Department of environmental quality, § 39-104.

Prior Laws. — Former § 50-1703 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: Mann v. Granite Reeder Water & Sewer Dist., 143 Idaho 248, 141 P.3d 1117 (2006).

50-1703A. Local business improvement districts. — (1) The legislature finds that the development of architectural themes for cities is a legitimate method to further the public health, safety and welfare of cities. The purpose of the provisions of this section is to authorize cities to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings to bring business buildings within the district into conformity with the architectural theme adopted by the city. The improvement of business buildings in conformity with the architectural theme adopted by the city is hereby declared a public purpose.

(2) Municipalities are hereby authorized to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings in order to bring business buildings within such districts into conformity with an architectural theme adopted by the city.

(3) The term “business building” includes any building devoted primarily to business purposes, including professional and governmental purposes.

(4) It is the intent of the provisions of this section that local business improvement districts be administered in all respects as are local improvement districts, except as provided herein.

(5) Local business improvement districts shall be initiated by presentation to the council of a petition containing the following:

- (a) A description of the particular lots and parcels to be included in the proposed district;
- (b) A description of the improvements to be constructed and financed by the district;
- (c) The estimated cost of the improvements;
- (d) The percentage of the cost to be assessed against each lot and parcel within the district; and
- (e) The signature of the owner of record of each lot or parcel to be included within the district, consenting to inclusion of the lot or parcel within the district.

(6) The total project amount assessed against each parcel within the district shall be no more than twenty percent (20%) of the market value for assessment purposes of the parcel.

(7) Lots and parcels need not be contiguous in order to be included within a district. No lot or parcel may be included within a district without the written consent of the owner thereof; provided, that, after the district has been created, consent to inclusion in the district may not subsequently be withdrawn prior to payment of all costs of the improvements.

(8) Upon receipt of the petition, the council shall adopt a resolution of intention, substantially in the form provided in section 50-1707, Idaho Code, stating the council's intention to create the district, to make the improve-

ments, and to levy assessments to pay the cost thereof. The resolution shall contain a statement as to the percentage of the costs to be assessed against each particular lot or parcel within the proposed district.

(9) Notice shall be given and a hearing conducted in the manner provided in sections 50-1708 and 50-1709, Idaho Code. If, after such hearing, the council determines to create the district, it shall proceed as provided in this chapter for the creation of the district, the construction of the improvements, the preparation of, hearing upon, and confirmation of the assessment roll, the collection of assessments and the issuance of bonds or warrants. Each assessment shall be a lien upon the property against which it is assessed, as provided in section 50-1721, Idaho Code. [I.C., § 50-1703A, as added by 1987, ch. 26, § 1, p. 34.]

50-1704. Improvements on railroad tracks or on one side of a street. — (a) Whenever any improvement shall be made upon any street occupied by the tracks of any railroad, the council is authorized and it shall be its duty to assess against such railroad situated within the improvement district its just proportion of the cost and expenses of making such improvement, which proportion shall be estimated on a basis of charging to said railroad not less than the cost and expenses of improving the space between the rails of said tracks, and for a distance of two (2) feet on each side of said rails. Said assessment shall be made on the rolls of said improvement district against the railway or railroad, the same as against other property, and said assessment shall be a lien upon said portion of said railroad from the time of the levy of the assessment by the council, and shall be collected in the same manner as other local improvement district assessments.

(b) When any work or improvement herein authorized is done or made on only one (1) side of the center line of any street, assessments to cover the cost and expenses of such work or improvement may be levied on the lots and lands on that side only or on both sides, in amounts on each side as the council shall determine based on the benefits resulting to the property on each side. [I.C., § 50-1704, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1704 was repealed. See Prior Laws, § 50-1701.

50-1705. Modified district. — Whenever any local improvement shall be of such nature and character that the special benefits resulting therefrom extend beyond the boundaries of the property abutting the improvement or whenever the special benefits do not accrue to some or all properties abutting the improvements, but to other properties, the council may create a modified local improvement district, which shall include as near as may be determined all the property especially benefited by such improvements. Provided however, that by unanimous agreement of the property owners to be assessed, properties may be included or excluded from the local improvement district regardless of whether they are specially benefited by the improvements. When such district is created, all property therein shall be

assessed for a portion of the cost and expenses of such improvements, to be determined and fixed by the council when the district is created. [I.C., § 50-1705, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 3, p. 722.]

STATUTORY NOTES

Prior Laws. — Former § 50-1705 was repealed. See Prior Laws, § 50-1701.

50-1706. Initiation of organization of district. — The organization of any local improvement district herein provided for may be initiated upon a petition signed by not less than sixty percent (60%) of the resident owners or two-thirds (2/3) of the owners of property subject to assessment within such proposed improvement district, or by resolution of the council adopted by an affirmative vote of a majority of the members of the full council at a regular or special meeting thereof. The terms of a petition shall include a description of the boundaries of a proposed district, the improvements to be made and the property to be assessed. [I.C., § 50-1706, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 4, p. 722.]

STATUTORY NOTES

Prior Laws. — Former § 50-1706 was repealed. See Prior Laws, § 50-1701.

50-1706A. Fees. — In the case of any local improvement district initiated by petition, the petitioners may authorize the council to charge the petitioners a reasonable fee for the council to retain outside advisors to assist the council in assessing the proposed local improvement district. The council may not charge the petitioners any fee for review of a proposed local improvement district unless the petitioners authorize the fee. [I.C., § 50-1706A, as added by 1999, ch. 291, § 5, p. 722.]

50-1707. Resolution of intention to create district. — Upon the filing of a petition or upon initiation of a district by council action, the council shall at a regular or special meeting adopt a resolution giving notice of its intention to create the district, to make the improvements and to levy assessments to pay all or a part thereof. The notice shall contain:

(a) A description of the boundaries of the district to be created and the property to be assessed, sufficient to inform the owners thereof that their property is to be assessed.

(b) A general description of the improvements contemplated together with an estimate of the total cost and expenses of the same and a statement of the percentage or other calculation of the total cost and expenses of the improvements which will be paid from a levy of assessments on property benefited and the percentage or calculation of the total costs and expenses which will be paid from the general funds of the municipality or from such other source specified in the notice.

(c) A statement that the costs and expenses of the improvements will be assessed against the lots and lands specially benefited by such improvements, except as provided in section 50-1705, Idaho Code, and included in the district to be created according to a front foot method, or a square foot method, or a combination thereof, or in proportion to the benefits derived to such property by said improvements, or by another method agreed to by all property owners to be assessed, and the council shall state the method so determined in said notice.

(d) A statement that the district is to be a modified district within the meaning of this act, if the same is true, and the boundaries of such modified district shall be given.

(e) A statement of the time within which and the place at which protests shall be filed and of the time and place at which the council will conduct a public hearing to consider such protests. [I.C., § 50-1707, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 6, p. 722; am. 2007, ch. 58, § 1, p. 140.]

STATUTORY NOTES

Prior Laws. — Former § 50-1707 was repealed. See Prior Laws, § 50-1701.

Amendments. — The 2007 amendment, by ch. 58, inserted “or” preceding “in proportion to the benefits” in subsection (c).

Compiler’s Notes. — The term “this act”, in subsection (4), refers to S.L. 1976, ch. 160,

which is codified as §§ 50-1701 to 50-1703, 50-1704 to 50-1706, 50-1707 to 50-1721, and 50-1722 to 50-1727.

Effective Dates. — Section 2 of S.L. 2007, ch. 58 declared an emergency. Approved March 12, 2007.

JUDICIAL DECISIONS

ANALYSIS

Benefited lands.

Calculation of assessments.

Disqualification of council member.

Method of assessment.

— Benefits derived.

— Front or square footage.

Benefited Lands.

Any lands assessed within the proposed local improvement district must be “benefited” by such improvements. *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

Calculation of Assessments.

The commissioners of a local improvement district (LID) did not err in determining that the assessments to be made on the properties within the LID for the costs of street improvements should be calculated on the front foot method, and the said commissioners did not err in failing to modify the assessment so imposed on the plaintiff property owner by consideration of the benefits conferred by the project on the separate properties in the district. *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

Disqualification of Council Member.

The ownership of property in a local improvement district (LID) does not disqualify a council member from participating in proceedings to form a LID or assess property levies. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

Method of Assessment.

A basic qualification of an assessment method is that there must be a factual correlation between the result of an assessment formula and the actual benefit conferred. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

— Benefits Derived.

In applying the “benefits derived” method of assessment pursuant to subdivision (c) of this section, a municipality may consider square footage and zones based on the proximity to

improvements made in reaching an equitable distribution of costs in relation to benefits. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

In applying the "benefits derived" method of assessment pursuant to subdivision (c) of this section, the city supported its choice of a 100-40-20 ratio to allocate improvement costs with testimony that an architectural firm had described to the steering committee and the city council a number of assessment methods, including the use of a ratio, the city council deliberated over the methods available, considering a 100-50-25 ratio as well as the one ultimately selected, and the assessments levied appeared to be reasonable approximations of value of the benefits derived by each property owner. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

When the "benefits derived" method of assessment is used pursuant to subdivision (c) of this section, "benefits" need not be defined as the increase in market value of each particular parcel of property before and after improvements, considering the property's highest and best use. Instead, the city can

consider special benefits, including stabilization of property values and rents; improved access to downtown businesses; enhanced ability to use the downtown area for public activities; increased safety for downtown pedestrians and business customers; improved appearance of the downtown area; and increased likelihood of preservation and restoration of historic downtown buildings. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

—Front or Square Footage.

The front or square footage methods of assessment are a less flexible method of apportioning costs than the benefits derived method. The front and square footage methods may be satisfactory where an improvement is limited in scope and of proportionally equal benefit to all affected properties, such as a sewer, a roadway or a water line; however, where benefits are contemplated to be less immediate and measurable, a method of assessment based solely on front or square footage will be inadequate. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Basis of assessments.
Defective ordinance.
Estimate by engineer.
Failure to file affidavit.
"General character" defined.
General description and cost estimates.
Notice of organization as due process.
Notice to nonresident taxpayer.
Purpose of ordinance. *
Substantial compliance.
Sufficiency of description.
Test of ordinance.
Waiver of defects.

Basis of Assessments.

Former section governing creation of sewerage districts contemplated that assessments be made in accordance with the benefits received by each tract of land. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Defective Ordinance.

Ordinance of intention which stated that sewerage district should not include, for assessment, property occupied by the cross streets and alleys in said district, omitting streets, was defective. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

Where ordinance was defective, it could be cured by positive statement in the law authorizing the ordinance; property owners and other persons interested had notice by the

statute itself. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

Estimate by Engineer.

Former section governing creation of sewerage districts contemplated that, before assessment roll could be properly prepared or contract let for construction of sewer system, there was required to be basis for same which requires estimate of costs by city engineer. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Failure to File Affidavit.

Mere failure to file affidavit of publication was not jurisdictional and, in such case, where publication was actually made, full notice was, in fact, given as required by statute and no property owner was in any way

injured. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

"General Character" Defined.

"General character of proposed improvement" did not mean that special, particular, minute or detailed description of work should be stated, but that general statement should be made pertaining to whole class or order; belonging to a whole rather than a part. It was optional with council whether it should adopt any system of universal application or pursue any plan which it may deem best suited to improvement contemplated at given time. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

General Description and Cost Estimates.

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of the elaborate provisions for public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

Notice of Organization as Due Process.

Due process in the organization of special assessment district and issuance of bonds thereby was afforded by the municipality's notice to all interested parties, hearing before the council, and the municipality's assessment of benefits for the district. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Notice to Nonresident Taxpayer.

Notice of municipality's organization of a special assessment district to a taxpayer outside of the district was unnecessary to afford due process where no burden was placed on such taxpayer's land. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Purpose of Ordinance.

Resolution or ordinance of intention was for purpose of giving notice to property owners who would be subjected to costs and assessments of intention of council. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Substantial Compliance.

It was sufficient compliance with former section governing creation of sewerage districts for city council to pass an ordinance giving names and description of streets to be improved and character of improvement to be made, and reciting that public interest and convenience demand that such improvement be made, and designating a time on or before which protests could be made and filed with

the city clerk against such proposed improvement. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

Where resolution or ordinance of intention described exterior boundaries of improvement district proposed to be established, and also contained number of lots and blocks within such district that would be affected by such improvement, it was sufficient compliance with former section governing creation of sewerage districts, since the streets and alleys could be readily ascertained and determined from said description. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

In assessing property for local improvements a substantial compliance with the law was sufficient. *McQueen v. City of Moscow*, 28 Idaho 146, 152 P. 799 (1915).

In ordinance ordering improvements and assessment, the lots and tracts of land to be assessed were required to be described by their subdivisions and present ownership, but this was not required in the ordinance of intention. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Sufficiency of Description.

Former section governing creation of sewerage districts was required to be liberally construed and substantial compliance was all that was required of council. Property sought to be charged was sufficiently described if it could be identified. *Platt v. City of Payette*, 19 Idaho 470, 114 P. 25 (1911).

Where ordinance declaring intention of council to organize a sewer district and construct a sewer system stated that character of proposed lateral system should be that of gravity and according to plans and specifications on file in office of city engineer it was sufficient compliance with former section governing creation of sewerage districts. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

Notice advising that certain proposed work would be done in accordance with plans and specifications in office of city engineer was sufficient. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

A proposed change in the plan of a sewer system which did not increase the cost, and no one was injured thereby, was not such a departure from the plan and construction described in the ordinance of intention as would render the proceedings void. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

Where a village passed ordinances declaring an intention to establish certain sewer districts and defining their boundaries and referring to certain plans, outlines and estimates of cost thereof in office of village clerk, where persons interested were thereby referred for more detailed information, such

proceedings were sufficient compliance. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

Where boundary lines given in an ordinance were boundary lines of a city they were sufficient. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Test of Ordinance.

Test as to whether notice of intention complies with law was whether it furnished an

effective opportunity to be heard and gave reasonable notice thereof to those interested. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

Waiver of Defects.

Protest by property owner against creation of proposed improvement district waived objection to the sufficiency of notice of the description of district. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

50-1708. Notice of intention and hearing. — The notice of intention shall be published in the official newspaper of the municipality in three (3) consecutive issues if a daily newspaper, or in two (2) issues if a weekly newspaper or in case no newspaper is published in such municipality then by posting for five (5) days in three (3) public places within the proposed improvement district. A copy of such notice shall be mailed to each owner of property if known or his agent if known, within the limits of the proposed improvement district, addressed to such person at his post office address if known, or if unknown, to a post office in the municipality where the improvement is to be made. Ownership of property shall be determined as of the date of the adoption of the resolution of intent to create. The hearing shall take place not less than ten (10) days from the date of the first of said publications or postings or the date of said mailing, whichever is later. [I.C., § 50-1708, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1708 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Nature of improvements and estimated costs.
Notice to nonresident taxpayer.

Nature of Improvements and Estimated Costs.

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of the elaborate provisions for

public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

Notice to Nonresident Taxpayer.

Notice of city's organization of special assessment district to a taxpayer outside of the district was unnecessary to afford due process, where no burden was placed on the land of such taxpayers. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

50-1709. Protests and hearing. — Any owner of property to be assessed in the proposed local improvement district described in the notice of intention shall have the right, in advance of the hearing, to file in writing a protest to the creation of the district or making any other objections in

relation thereto. At the date, time and place specified in the notice of intention the council shall in open and public session consider all protests which have been filed in writing in advance of the hearing, and the hearing may be adjourned from time to time to a fixed future time and place for the same until all such protests have been heard. The decision of the council as to all protests shall be conclusive and final, and if it should so determine, the council may delete any improvements or any property which had originally been contemplated in the said notice. If owners of more than two-thirds ($\frac{2}{3}$) of the property to be assessed protest any of the proposed improvements which affect their property, the council shall not proceed further with the work so protested unless a majority of the members of the full council shall vote to proceed with such work. The vote on the hereinafter mentioned ordinance creating the improvement district shall constitute the vote as to whether or not the council will proceed. Any property owner who fails to file a protest within the time specified, or having filed one withdraws said protest, shall be deemed to have waived any objection to the creation of the district, the making of the improvements, and the inclusion of his property in the district. Such waiver shall not preclude his right to object to the amount of the assessment at the later hearing provided for such purpose.

In cases where the creation of a local improvement district has been proposed by the governing board of an entity other than a city council or board of county commissioners, and where written protests are filed and sixty percent (60%) of the resident owners or the owners of two-thirds ($\frac{2}{3}$) of the lots and lands subject to assessment within such proposed improvement district have signed such protest, the governing board of the governmental entity proposing the local improvement district shall not be allowed to proceed with the creation of the district for a period of one hundred eighty (180) days. During this one hundred eighty (180) day period, the city council shall act as a review board for as much of the proposed district as is situated within the boundaries of the city, and the board of county commissioners shall act as a review board for that portion of the proposed local improvement district as is situated within the unincorporated portion of the county. As a review board, the city council or board of county commissioners shall review the record of the proposal, including conformance with procedural provisions of law. The city council or board of county commissioners shall also evaluate the necessity or desirability of the proposed district, and shall take into consideration the creation of the proposed local improvement district as it relates to the following:

- (a) the health, safety and welfare of the residents of the proposed district, or of persons having the necessity to travel through the district; and
- (b) the financial impact of the creation and implementation of the objectives of the proposed district upon the property owners within the proposed district, especially in light of projects recently undertaken or contemplated for the near future within the district.

After its evaluation, the city council shall approve, modify or reject the proposal for the creation of a local improvement district for as much of the proposed district as is situated within the boundaries of the city, and the board of county commissioners shall approve, modify or reject the proposal

for the creation of a local improvement district for as much of the proposed district as is situated within the unincorporated portion of the county. [I.C., § 50-1709, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 7, p. 722.]

STATUTORY NOTES

Prior Laws. — Former § 50-1709 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Statute of limitations.

Constitutionality.

This section, which sets out the procedure whereby a proposed local improvement district may be protested by affected property owners, is not unconstitutional as a denial of the due process rights of the protesting property owners. *Mangum v. City of Orofino*, 105 Idaho 307, 669 P.2d 196 (1983).

Statute of Limitations.

The 30-day limitation period of § 50-1727 has application to a “contest or proceeding to

question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby,” and not to a constitutional attack on a statute. Thus, where property owners objecting to the formation of a local improvement district challenged the constitutionality of the authorizing statute (this section) itself, the statutory period of limitations did not apply. *Mangum v. City of Orofino*, 105 Idaho 307, 669 P.2d 196 (1983).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Decision of council.
Waiver.

Decision of Council.

Decision of city council on all protests to creation of district or making of improvements was final and conclusive, and after decision, said council was deemed to have acquired jurisdiction to order improvements. *Bell v. City of Moscow*, 48 Idaho 65, 279 P. 1095 (1929).

Waiver.

If property owner did not object to creation of district, as herein provided, he would be deemed to have waived any right he had to object. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

50-1710. Ordinance creating improvement district and procedure for construction bids. — If, after the hearing on the creation of the district, the council finds (a) that the district will be for the best interest of the property affected and the municipality, (b) that there is reasonable probability that the obligations of such district will be paid, and (c) the value of the property within the proposed district, including the proposed improvements, is sufficient, it shall then enact an ordinance providing for such improvements and creating a local improvement district to be called “Local Improvement District No. for, Idaho,” which shall include all of the property within said district in accordance with the findings of the council, and said ordinance shall set forth the boundaries of the district, provide the improvements which shall be made, and state that the total cost

and expenses thereof shall be assessed according to the percentage or calculation hereinbefore mentioned on all benefited property in the district by using the method of assessment contemplated in the notice of intention subject to any variation therefrom as a result of the council's determining that the benefits to be derived by certain lots or parcels of property warrant such variations. The council may either purchase, acquire or construct the improvements. The council shall appoint an engineer. If the council elects to construct the improvements, the engineer shall have prepared the necessary plans and specifications for the construction work ordered.

Except as hereinafter otherwise provided, the council shall authorize the advertisement for bids therefor by giving notice calling for sealed bids in accordance with the provisions of chapter 28, title 67, Idaho Code.

Any acquisition, purchase or construction contract made by a municipality for any improvements authorized by this code shall be made by the council in the name of the municipality upon such terms of payment as shall be fixed by the council. The contract shall be authorized by resolution empowering the authorized officer of the municipality to execute the contract. The resolution need not set out the contract in full but it shall be sufficient if the resolution refers to a copy of the contract on file in the office of the clerk where it is available for public inspection.

Any provision in this local improvement district code notwithstanding, if any municipality shall elect to exercise the powers herein granted jointly with any other public agency or agencies as authorized by the provisions of section 67-2328, Idaho Code, the improvements as contemplated within the local improvement district may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any Idaho public agency jointly participating in the work. [I.C., § 50-1710, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 8, p. 722; am. 2005, ch. 213, § 20, p. 637.]

STATUTORY NOTES

Prior Laws. — Former § 50-1710 was repealed. See Prior Laws, § 50-1701. words "this code" in third paragraph, see § 50-1701.

Compiler's Notes. — For meaning of

JUDICIAL DECISIONS

Engineering and Design Expenses.

Engineering and design expenses incurred prior to the formation of the local improvement district were properly assessed against the property owners. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

Cited in: *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Character of bond.

Competitive bidding.

Contract to lowest bidder.

Costs incurred pursuant to invalid contract.
Description.
Discretion of council.
Hearing required.
Inclusion of property.
Nature of improvement and cost estimates.
Second ordinance.
Specifications.
Substantial compliance.
Valid contract.
When costs incurred.

Character of Bond.

Where public improvement contract provided for the giving of a surety company bond, acceptance of private bond did not invalidate contract. *Pease v. City of Payette*, 26 Idaho 793, 147 P. 290 (1915).

Competitive Bidding.

Where specifications called for patented pavement and owner of such patent was not a bidder and had no interest of any kind in any bid, but filed a written statement offering to sell its patent pavement and right thereto at a flat price to any bidder, the principle of competition was retained. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Contract to Lowest Bidder.

Contract was required to be let to lowest bidder unless good reason existed why higher was best responsible bidder, and such reasons were required to be made of record. *Seysler v. Mowery*, 29 Idaho 412, 160 P. 262 (1916).

Costs Incurred Pursuant to Invalid Contract.

Under former similar section, where improvements were ordered prior to the date a hearing was held, engineering and construction fees added to the work after the hearing date because of the original work were "incurred" prior to the hearing date; accordingly, the city, which was without jurisdiction to order the original contract, could not assess property owners for any fees arising from completion of that contract. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

Description.

In ordinance ordering improvements and assessment, lots and tracts were required to be described by their subdivisions. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

Discretion of Council.

Court should not set aside action of council under former similar section in absence of proof that such action was arbitrary and without regard to benefits accruing to adjacent property by reason of the improvement. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

Hearing Required.

Under former similar section, a city did not have jurisdiction to order irrigation system improvements prior to the date of hearing, and the mere fact that the orders were not actually signed until after the hearing date did not validate them. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

Inclusion of Property.

Mere inclusion of property in improvement district was not final decision that it was subject to improvement. *Bell v. City of Moscow*, 48 Idaho 65, 279 P. 1095 (1929).

Nature of Improvement and Cost Estimates.

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of the elaborate provisions for public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

Second Ordinance.

After ordinance of intention had been enacted, stating the intention of city, the city council should have passed ordinance establishing improvement district, and, in later ordinance, general character of proposed improvement should have been stated and the more specific character of proposed improvement have been given. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Specifications.

Power was vested in council to determine character and kind of materials to be used in proposed improvement. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Specifications were required to be sufficiently definite to enable strict enforcement of terms against successful bidder. *Seysler v. Mowery*, 29 Idaho 412, 160 P. 262 (1916).

Substantial Compliance.

Former section governing contracts for improvements was substantially complied with by council passing and mayor approving an ordinance providing for contract and authorizing its execution and prescribing terms and conditions thereof. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

Valid Contract.

Provisions in street improvement contract holding contractor responsible for defects and damages were held not to make the contract invalid. *Pease v. City of Payette*, 26 Idaho 793, 147 P. 290 (1915).

When Costs Incurred.

Where change orders for the installation of an irrigation system were authorized by a city prior to the date on which the hearing required by former similar section was held, the costs were "incurred" for purposes of determining whether the city had jurisdiction to assess property owners for improvements, even though the city had not actually expended the moneys. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

50-1711. Limitation on assessments against property. — No municipality shall order any improvement to be paid for by local assessment where the estimated costs of such improvement, if such costs are to be assessed to the property in the district, or that portion of the estimated costs to be assessed, if a portion only of said total costs are to be assessed, when added to all other outstanding and unpaid local improvement assessments against the property included in the district, excluding penalties and interest, shall exceed the actual value of the real property, including the value of the improvements thereon.

The council shall provide, by ordinance, the method of determining the actual value of the real property including the improvements thereon in the district and when the valuation is so determined, such valuation shall be final and conclusive in the absence of fraud or gross mistake. [I.C., § 50-1711, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1711 was repealed. See Prior Laws, § 50-1701.

50-1712. Preparation of assessment roll and notice of hearing thereon. — After the contract has been awarded and at such time as the council shall determine, the engineer shall prepare a duly certified report to the council showing in detail the total cost and expenses of the improvements and the dollar amounts of the same payable from assessments and from other sources. The report shall also contain a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of property assessed, and showing the amount chargeable to each lot or parcel of property according to the method of assessment originally contemplated by the council subject to any variations therefrom as a result of the engineer's recommendation that benefits to be received by any lot or parcel of property warrant such a variation from the method chosen. Each lot or parcel of property shall be described with sufficient clearness to identify it, and if the engineer recommends any variations from the contemplated method of assessment, those variations shall be pointed out and the reasons for the same shall be given in the report. No assessment for water or sewer purposes shall be levied against any property of any

public utility unless the latter shall agree to the same by filing a written consent in the office of the clerk of the municipality; and in the event that a local improvement district constructs water and sewer improvements as well as other improvements the engineer shall assess public utilities only for the amount of the total cost and expenses which the engineer finds to be attributable to such other improvements if no such consent has been given.

Upon receipt of the report, the council shall cause the assessment roll contained therein to be filed in the office of the clerk where it shall be available for public inspection. The council shall thereupon fix a time and place when and where the council will meet in open session and consider the report and the assessment roll and hear all objections to the assessment roll by the property owners of the district. [I.C., § 50-1712, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1712 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

Cited in: Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

“Abutting on” and “contiguous”.

Basis of assessment.

Jurisdictional requirements.

Municipal property.

Obligation of indebtedness.

Owner not known and property not described.

Presumption of compliance.

Presumption of knowledge of city's powers.

Public records.

Quiet title action.

Reassessments to cover deficiency.

Reconstruction of system.

“Abutting on” and “Contiguous”.

Terms “abutting on” and “contiguous” were synonymous, both conveying idea that lot borders on improvement. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

Franchise, roadbed, tracks and like property of street railroads in pavement improvement district were taxable as “abutting, contiguous, tributary or included lands” in proportion to benefits accruing from the improvement. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

Basis of Assessment.

It was both just and equitable that special assessments within a sewer district be imposed upon the land itself and not upon the improvements thereon. *McGilvery v. City of*

Lewiston, 13 Idaho 338, 90 P. 348 (1907).

Assessment should be made with reference to the frontage of lots and lands and benefits to be derived to the abutting property by reason of sewer improvement; the number of fronting feet of lots and lands was not sole controlling fact for consideration in levy of a special assessment. *Blackwell v. Village of Coeur d'Alene*, 13 Idaho 357, 90 P. 353 (1907).

Paving assessments based on frontage were not invalid because of differences in value and depth of various properties assessed. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

The measure of assessments of property of a drainage district was that of benefits received. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Jurisdictional Requirements.

Under constitutional requirement of due process, requirement of statute that assessment roll name the owner of property assessed if known, and/or describe property if owner unknown was jurisdictional and did not relate to mere irregularities in assessment proceeding, and hence a statutory provision for appeal within five days as exclusive means of attack on assessment would not bar suit attacking assessment for failure to comply with such provision. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

Municipal Property.

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Obligation of Indebtedness.

Indebtedness created under former sections governing sewer construction was against property in the district and was not an obligation of the city or village. *Broad v. City of Moscow*, 15 Idaho 606, 99 P. 101 (1908).

Owner Not Known and Property Not Described.

Local improvement district assessment roll, made pursuant to ordinance requiring description of assessed property, purporting to assess property in the name of contract vendee by description merely referring to tax list in which property was misdescribed, was insufficient on which to base delinquency certificates, and deed to holder thereof, especially in absence of a showing by whom tax list was made or authorized and purpose thereof. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

Presumption of Compliance.

It would be presumed, in absence of evidence to contrary, that official acts connected with assessment were performed in substantial compliance with statute. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

Presumption of Knowledge of City's Powers.

Knowledge of statute providing that all improvements made within paving improve-

ment district, especially benefiting city property therein, should be payable out of general fund would be imputed to purchasers of improvement district bonds, since all persons were presumed to know extent of city's powers to levy assessments against property in improvement district. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

Public Records.

Local improvement district assessment roll was public record to which property owners were entitled to look for information as to whether their property had been assessed. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

Quiet Title Action.

In a suit to quiet title and recover possession of realty as against a grantee of an invalid deed, issued to purchaser of delinquency certificate for amount of invalid improvement assessments, amount paid by grantee for delinquency certificate, deed, recording fee, and taxes on and improvement of property was required to be deducted from the amount due owners by grantee as rental for use and occupation of the premises. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

Reassessments to Cover Deficiency.

Under statute providing for assessment of lands in improvement district in proportion to number of feet fronting thereon, or included therein, and in proportion to the benefits received, private property within paving improvement district could not be reassessed to make up deficiency for failure of street railroads to pay balance due under lawful assessments against their property. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

Reconstruction of System.

After the property of a city had once been assessed for a sewerage system, the same property could be again assessed for the purpose of building a new system where the old one had become inadequate. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

50-1713. Notice of hearing on assessment roll. — After the council fixes the time and place for said hearing on the assessment roll, the clerk of the municipality shall give notice by publication in the official newspaper of such municipality in three (3) successive issues if published in a daily newspaper, or by publication in two (2) issues if published in a weekly newspaper, the first of which publication shall be at least fifteen (15) days before the date fixed for hearing objections to said assessment roll, that such assessment roll is on file in his office. The notice shall further state the date, time and place at which the council will hear and consider objections to the

assessment roll by the parties aggrieved by such assessments. The clerk shall, not less than fifteen (15) days before the date fixed for hearing objections to said assessment roll, mail a substantially similar notice to each owner of property if known, or his agent if known, within the limits of the improvement district, addressed to such person at his post office address if known, or if unknown, to the post office in such municipality where the improvement is to be made. The mailed notice shall also state the amount of the individual assessment and that at the specified time and place the council will hold a hearing to hear and determine all objections to the regularity of the proceedings in making such assessment, the correctness of the assessment, and the amount levied on the particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvements in the project. It shall further state that each owner of property within the district is given notice that in revising the assessment roll at or after the hearing, the council may increase any assessment or assessments up to twenty per cent (20%) of the original amount thereof without giving further notice and holding a new hearing thereon. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, before the date and time fixed for the hearing, file with the clerk his objections in writing to said assessment. [I.C., § 50-1713, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1713 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

Cited in: Ward v. Ada, County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984); Simmons v. City of Moscow, 111 Idaho 14, 720 P.2d 197 (1986).

50-1714. Hearing objections to assessment roll and confirmation. — At the time appointed for hearing objections to such assessment roll, the council shall consider the engineer's report and the assessment roll and shall hear and determine all objections which have been filed by any party interested to the regularity of the proceedings in making such assessment, to the correctness of such assessment, to the amount levied on any particular lot or parcel of land, including the benefits accruing thereon and the proper proportionate share of the total cost of the improvements to be borne thereby and to the inclusion of any lot or parcel of land in the proposed district. The council shall have the power (a) to adjourn such hearing from time to time and, in its discretion, to revise, correct, conform or set aside any assessment and to order that such assessment be made de novo, and (b) to exclude any lot or parcel of land from an assessment roll which, in the judgment of the council, it finds will not be benefited by improvements to be made. If any assessments are increased in an amount greater than twenty per cent (20%) of the amount of the assessments as set out in the notice of the hearing, then a new notice of the hearing shall be given and a new

hearing held as aforesaid. No new hearing shall be required in the event that any assessments are decreased in any amount or are increased in an amount up to twenty per cent (20%) of the original amount. [I.C., § 50-1714, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1714 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

Cited in: Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984); Simmons v. City of Moscow, 111 Idaho 14, 720 P.2d 197 (1986).

50-1715. Confirmation of assessment roll. — After said hearing the council shall pass an ordinance confirming the assessment roll as corrected by them in relation to the benefits accruing thereon as a result of the improvements being made. The ordinance shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each lot or parcel of land, which ordinance shall contain a finding that each lot or parcel of land is benefited to the amount of assessment levied thereon subject to appeal as provided herein. Upon passage of the ordinance, the clerk shall certify and file the confirmed assessment roll with the treasurer of the municipality and the assessments therein shall be due and payable to the treasurer within thirty (30) days from the date of the adoption of the ordinance. The confirmed assessment roll and the assessments made by the confirmed assessment roll shall be a lien upon the property assessed from and after the date the following notice is recorded. Immediately upon passage of the confirming ordinance the clerk shall file with the county recorder a notice which shall contain the date of the confirming ordinance and a description of the area or boundaries of the district. If any assessment is not paid in full within said thirty (30) day period, such assessment shall become delinquent and shall be collected in the same manner and with the same penalties and interest added thereto as hereinafter provided for delinquent assessments. The council may, in the alternative, determine to make assessments unpaid at the end of said thirty (30) day period payable in installments and to issue and sell registered warrants or installment bonds payable from such unpaid installments as herein provided. If the council chooses to do so, it shall provide in said ordinance that any property owner who has not paid his assessment in full within said thirty (30) day period will be conclusively presumed to have chosen to pay the same in installments, and the ordinance shall then establish the number of years said installments shall run, the dates of payment of the same and the rate of interest that the unpaid assessments shall bear, which rate shall not be less than the rate of interest borne by the warrants or bonds payable therefrom, said interest running from the date of the passage of the assessment ordinance, irrespective of the date of its official publication, and being payable at the same time and place as the installment payments of

assessments. Said installments shall be due and payable in not to exceed thirty (30) years to the treasurer or other proper officer as provided by the council. The ordinance shall establish the due date of the first installment payment and that the local or special assessments may be carried on the rolls of the municipality and collected as hereinafter provided. If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the treasurer shall add a penalty of two per cent (2%) thereto. In addition to any other method of collection provided in this code, the council may certify delinquent installments to the tax collector, and when so certified they shall be extended on the tax rolls and collected as are property taxes. In the event that any property owner should choose to pay his assessment in full after such time as it has been conclusively presumed that he will pay in installments, such payment in full shall include the full amount of the unpaid assessment plus penalties and all interest payable on the same plus additional interest thereon at the rate provided in the bonds from the date of the last installment due to one (1) year after the next interest date of said bonds.

Any errors in description, ownership of property or amounts in any assessment ordinance adopted pursuant to this section may be corrected by the passage of an amendatory ordinance which need set forth only the corrected descriptions or amounts. The passage of such amendatory ordinance shall serve only to postpone the thirty (30) day period for payment in full of the assessments actually affected by such amendatory ordinance and the due dates of installments of such affected assessments shall be the same as the due dates of installments not affected. Notice of any assessments so affected shall be given in the same manner as hereinafter provided for the giving of notice of assessments. [I.C., § 50-1715, as added by 1976, ch. 160, § 2, p. 567; am. 1983, ch. 41, § 1, p. 98.]

STATUTORY NOTES

Prior Laws. — Former § 50-1715 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code" see § 50-1701.

JUDICIAL DECISIONS

Cited in: Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

City clerk authorized to collect tax.
City liable for failure to collect assessments.
Contracts.
Discharge of individual property.
Embezzlement by clerk.
Improvement tax funds.
Interest.
Prerequisites to confirmation.
Sufficiency of order.

City Clerk Authorized to Collect Tax.

A clerk of a city had statutory authority to receive and receipt for local improvement assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

City Liable for Failure to Collect Assessments.

Under a former statute providing that a municipality should not be liable on local improvement bonds, except for the collection of the special assessment made for the improvement, a city was liable for the bona fide collection of the assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Contracts.

Contractor took his chances on proceeding to construct sewers prior to confirmation of assessment, but when council confirmed assessment, such contract was in full force and effect. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

Discharge of Individual Property.

Payment of special improvement district's assessment against a particular individual and property discharged such property from further liability on the district bonds. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Embezzlement by Clerk.

A city which permitted its clerk to collect local improvement assessments, which were properly paid in part to bondholders by the city treasurer, could not allege illegality of collection by clerk, rather than by county tax

collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk's embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Improvement Tax Funds.

Funds collected by city through its clerk, by means of improvement district assessments, were "trust funds," pledged exclusively to the payment of the bonds issued against the special assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Interest.

Person who desired to redeem his property, or clear it of the lien created by issuance of local improvement bonds, could do so by paying assessment against his property in full with rate of interest which the bond draws, until the bond becomes due. *Veatch v. City of Moscow*, 24 Idaho 461, 134 P. 551 (1913).

Prerequisites to Confirmation.

It was not indispensable, before sewer assessment could be confirmed, that ordinance of intention shall have contained a detailed statement of plans and specifications of the work and of the material of which the system was to be constructed. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

Sufficiency of Order.

Any order or action of council which disclosed their approval was sufficient. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

50-1716. Notice and payment of assessments. — Upon passage of the assessment roll, the treasurer of the municipality shall mail a postcard or letter to each property owner assessed at his post office address if known, or if unknown, to the post office in the municipality where the improvement is being made, stating the total amount of his assessment, plus the substance of the terms of payments of the same as set out in the ordinance confirming the assessment roll.

An affidavit of the mailing of the notice shall be filed, before the date of delinquency, in the office of the treasurer in the file of the improvement district, but the failure of the treasurer to give any notice required by this section or to do any other act or thing required by this section, shall not affect the validity of the assessments or installments thereof due nor extend the time for payment, but shall subject the municipality to liability to a taxpayer for any damage sustained by the latter by reason of such failure. [I.C., § 50-1716, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1716 was repealed. See Prior Laws, § 50-1701.

50-1717. Installment docket. — Whenever any improvement bonds or warrants are issued as herein provided, the treasurer shall immediately thereafter mark on the assessment roll of such local improvement district opposite each assessment which has been paid, the word “paid” together with the date of payment, and shall immediately thereafter enter in a docket to be kept for that purpose, known as “local improvement installment docket” under separate heads for each improvement district, all unpaid assessments as shown on such assessment roll, said docket to be made up from the assessment roll, and shall contain in separate columns the number of the assessment, the name of the owner, the description of the property, the amount of the total assessment, the amount and date when due of each annual installment with interest added, and a blank column in which shall be marked the date of payment of each installment. Such docket shall stand thereafter as a lien docket for such assessments so shown until paid. [I.C., § 50-1717, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1717 was repealed. See Prior Laws, § 50-1701.

50-1718. Appeal procedure — Exclusive remedy. — Any person who has filed objections to the assessment roll or any other person who feels aggrieved by the decision of the council in confirming the same shall have the right to appeal to the district court of the county in which the municipality may be situated. Such appeal shall be made within thirty (30) days from the date of publication of the ordinance confirming the assessment roll by filing a written notice of appeal with the clerk of the municipality and with the clerk of the district court aforesaid describing the property and objections of the appellant. The appellant shall also provide a bond to the municipality in a sum to be fixed by the court, but not less than two hundred dollars (\$200) with sureties to be approved by the court, conditioned to pay all costs to be awarded to the respondent upon such an appeal. After said thirty (30) day appeal period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said assessments for any reason whatsoever and, thereafter, said assessments and the liens thereon shall be considered valid and incontestable without limitation.

If an appeal is filed within said period, the case shall be docketed by the clerk of said court in the name of the person taking the appeal against the municipality as “an appeal from assessments.” Said cause shall then be at issue and have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant, from which judgment an appeal may be taken to the Supreme Court as provided by law. In case the assessment is confirmed, the fees of the clerk of the

municipality for copies of the record shall be taxed against the appellant with other costs. [I.C., § 50-1718, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1718 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

Consideration of Benefits to Property.

The district court, sitting in equity on an appeal from an assessment by a local improvement district, did not err in finding that the benefits conferred on the plaintiff's property by the construction of the street project were equal to or in excess of the amount of the assessment against the plaintiff's property;

thus, the district court did not err in exercising its equitable powers in declining to revise or reduce the assessment against the plaintiff's property by considering the possible future benefits which the project might confer upon another landowner's property. *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Evidence.

Jurisdiction.

Trial de novo.

Evidence.

Under former section governing trial of appeals there was implied power to admit relevant and competent evidence, and evidence as to benefit of various lots was admissible on same principle as opinion evidence of value in ordinary cases. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

Jurisdiction.

Former section governing trial of appeal limited power of court to confirming, modifying or annulling assessment insofar as it affected property of appellant and it had no jurisdiction to pass upon rights of other property owners. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

Under constitutional requirement of due process, requirement of statute that assess-

ment roll name the owner of property assessed, if known, and describe property if owner unknown was jurisdictional and did not relate to mere irregularities in assessment proceeding, and hence a statutory provision for appeal within five (now thirty) days as exclusive means of attack on assessment would not bar suit attacking assessment for failure to comply with such provision. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

Trial De Novo.

Language of former section governing trial of appeal clearly implied trial de novo, with power on part of court to modify assessment as seemed right. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

50-1719. Additional improvements. — Whenever any assessment is levied on any property for further, separate or additional improvement under the provisions of this code or any law of this state, such assessment shall be a subsequent lien upon the property so assessed to the lien of the unpaid assessments theretofore made for the original improvement. Whenever any assessment is made for such further, separate or additional improvement on property on which an existing assessment has been levied for improvements, such further, separate or additional assessment for improvement shall not be construed or considered as for one and the same improvement, or for the same purpose or for the same benefit, or as a double assessment for improvements against the property being assessed for the

payment of the cost and expense of such improvement but shall be considered and construed as a separate, distinct, single and independent improvement on and of benefit to the property so assessed. All assessments so levied or bonds or warrants issued payable from the same shall be considered and construed as assessments levied or bonds or warrants issued for separate, distinct, single and independent improvements and benefits on and to the property so assessed. [I.C., § 50-1719, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

<p>Prior Laws. — Former § 50-1719 was repealed. See Prior Laws, § 50-1701.</p>	<p>Compiler's Notes. — For meaning of words "this code" see § 50-1701.</p>
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50-1720. Reassessment of benefits. — In all cases of assessments for local improvements of any kind against any property wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the charter provisions, or laws governing such assessments, the council shall be and is hereby authorized to reassess such assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment is made. No mistake in description of the property or the name of the owner thereof shall affect the validity of any assessment or any lien created thereby under the provisions of this code, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake, or inadvertence, the amount assessed on any property is insufficient to pay the cost and expenses of the improvement made and enjoyed by the owner of such property, it shall be lawful, and the council is hereby directed and authorized, to make reassessments on said property sufficient in amount to pay for such improvements, the reassessment to be made and collected in accordance with the provisions of law existing at the time of its levy. [I.C., § 50-1720, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

<p>Prior Laws. — Former § 50-1720 was repealed. See Prior Laws, § 50-1701.</p>	<p>Compiler's Notes. — For meaning of words "this code," see § 50-1701.</p>
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JUDICIAL DECISIONS

ANALYSIS

In general.
Jurisdictional defects.

<p>In General. When a trial court properly decreases some, but not all, assessments, this section requires the matter then be referred back to the city</p>	<p>council for reassessment of all benefited properties within the district so the deficiency can be made up. <i>Simmons v. City of Moscow</i>, 111 Idaho 14, 720 P.2d 197 (1986).</p>
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Jurisdictional Defects.

Since the legislature did not intend to correct jurisdictional defects under the reassessment statute, where a municipality originally lacked statutory jurisdiction to incur expenditures because it had not complied with the

applicable statutory provisions, it could not later acquire jurisdiction to incur those costs by complying with the statutory procedures after the costs had been incurred. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Basis.

Defeating right of reassessment as not taking property.

Bondholders compelling reassessment.

Bondholders entitled to unpaid interest.

Good faith of city pledged.

Mandamus compelling reassessment.

Mistake requiring reassessments.

Municipal property not subject to special assessments.

Property owners charged with notice of mistake.

Reassessment for deficiency.

Reassessment ineffective against u.s. government.

Basis.

Where reassessment was attempted to be made, it was required to be based upon some reason assigned in statute and in conformity therewith. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Defeating Right of Reassessment as Not Taking Property.

The fact that the purchase by the United States of property, which was subject to reassessment by a city to make up a deficiency for the payment of outstanding local improvement bonds, had the effect of frustrating the attempt to make such reassessment did not amount to the taking of the bondholders' property. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

Bondholders Compelling Reassessment.

Where, through fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, a cause of action by a holder of the bonds to compel reassessment of the property in the district to make up the deficiency did not accrue until actual notice of deficiency existing when bonds were sold. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Where, through the fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, the bondholders' only adequate relief was to have the property in the district, exclusive of lots sold for general taxes, reassessed for the payment of the deficit with interest from the date of the maturity of the bonds. *Maguire v. Whillock*,

63 Idaho 630, 124 P.2d 248 (1942).

Bondholders Entitled to Unpaid Interest.

Where a city council made no annual levies during the life of special or local improvement bonds, bondholders were entitled to unpaid interest. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Good Faith of City Pledged.

Ordinance authorizing issuance of special or local improvement bonds pledged good faith of city in carrying out its duties in connection with the district, and that all steps had been properly taken including a valid and sufficient assessment roll. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Mandamus Compelling Reassessment.

Bondholders were entitled to mandamus requiring reassessment to take care of the inadequacy of assessment roll and failure to make annual levies for the payment of interest. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Where mandamus to compel reassessment of property within a special or local improvement district was brought some eighteen months after actual notice of the deficiency through the city clerk's fault, the action was not barred by limitation. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Mistake Requiring Reassessments.

Where, through the fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, there existed a mistake within former similar section requiring reassessments. *Maguire v. Whillock*, 63

Idaho 630, 124 P.2d 248 (1942).

Municipal Property Not Subject to Special Assessments.

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Property Owners Charged With Notice of Mistake.

The property owners in a special or local improvement district were chargeable equally with bondholders with notice of the law, that in the event of mistake or inadvertence, reassessment may ensue, and with the duty of seeing that the law was complied with. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Reassessment for Deficiency.

Under a statute providing assessment of lands in improvement districts in proportion to the number of feet fronting thereon, or included therein, and in proportion to benefits

received and for payment by cities from the general fund of fair and equitable proportion of cost of improvements for benefit of city property in district, private property in improvement district could not be reassessed to make up deficiency resulting from void assessment of city property in district. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

Reassessment Ineffective Against U.S. Government.

A reassessment made by a city under former similar section for the amount of the deficiency of the original assessment to pay bonds, issued to finance a local improvement, was a nullity as to property to which the United States had acquired title, although the government agents learned while they were acquiring the land that the original assessments were insufficient to pay the bonds. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

50-1721. Lien of assessment — Foreclosure. — Assessments levied to pay the cost and expense of any improvement authorized by the provisions of this code, or any law of this state, shall constitute a lien upon and against the property upon which such assessment or assessments are made and levied from and after the date upon which the ordinance levying such assessment or assessments is passed, which lien shall be superior to the lien of any mortgage or other encumbrance, whether prior in time or not, and shall constitute such lien until paid, and until paid, such lien shall not be subject to extinguishment for any reason whatsoever, including but not limited to the sale of the property assessed on account of the nonpayment of general taxes or the conveyance of such property by any means to the United States of America, or any agency thereof, the state of Idaho, or any county, city, school district, junior college district or other public body, agency or taxing unit in said state. When bonds have not been issued and said assessments made payable in installments as herein provided, such assessments shall be collected, or the property therein shall be foreclosed and sold for such assessments and costs, in a suit for that purpose by the municipality.

Such suit shall be in the name of the municipality as plaintiff and against any one or more owners of property failing to pay such assessment or assessments as defendants. In any such proceedings where the court trying the same shall be satisfied that the improvements have been made or have been contracted for, which according to the true intent of this code would be properly chargeable to such property, a recovery shall be permitted and the lien enforced to the extent of the cost and expenses of the improvement which would be chargeable on such property notwithstanding any informality, irregularity or defect in any of the proceedings of such municipality or any of its officers, and such property shall be ordered sold for the payment of the assessment or assessments against it and the costs and expenses of

such suit including reasonable attorney's fees to be fixed by the court and prorated to each separate piece of property. [I.C., § 50-1721, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Cross References. — Effect of tax deed as conveyance, § 63-1009.

Sale of county property, § 31-808.

Prior Laws. — Former § 50-1721 was

repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code," see § 50-1701.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Failure to copy statute into bond.

Liens.

Numerical order payment.

Parties.

Priority.

Remedies of bondholders.

Failure to Copy Statute Into Bond.

Failure to copy former section governing bondholder's rights into the bond did not eliminate it. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

Liens.

Liens for local improvements were not discharged by tax sale where they attached after assessment for taxes on account of which property was sold. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

All parties were chargeable with knowledge of law to the effect that, when former chapter governing improvement districts had been complied with, the lien of the bonds upon lands of an improvement district became fixed and paramount to any other lien excepting those of general state, county and city taxes. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Numerical Order Payment.

Holders of improvement district bonds could not complain of payment by a city, under directory statute, of certain bonds in their numerical order before maturity when no objections were made until years after such payment had been made and the fund was insufficient to pay all bonds in full. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

Parties.

Purchasers of bond sold by city pending action to restrain levy of assessment need not be made parties before judgment could be rendered restraining collection of assessments for payment of bonds. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Where suit was instituted by taxpayer before bonds were sold or delivered, city could not defeat right of action by transferring such bonds and contending that bondholders were not parties to action. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Priority.

Special assessments did not have priority over general taxes. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Remedies of Bondholders.

In case municipal authorities failed or neglected to collect sewer district assessment or property owner refused or neglected to pay same, the warrant or bondholder could compel municipal authorities to act by writ of mandate, or could proceed in the ordinary way, to foreclose his lien through the district court in the same manner as he would foreclose any other mortgage or lien. *Blackwell v. Village of Coeur d'Alene*, 13 Idaho 357, 90 P. 353 (1907).

Bondholder could have no claim against city on account of debt created by bond and was given no right as against taxpayer who had paid all his assessments. *New First Nat'l Bank v. City of Weiser*, 30 Idaho 15, 166 P. 213 (1916).

If bondholder proceeded in manner provided by law he could either secure his money from delinquent taxpayer or obtain title to property of such delinquent free of all encumbrances. The remedy of bondholder was not against city nor improvement district nor person who had paid the sum due from him but against property of delinquent. *New First Nat'l Bank v. City of Weiser*, 30 Idaho 15, 166 P. 213 (1916).

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city's property, where the city never fixed any amount to be paid from general funds for improvements, and the item never was included within the budget or appropriation bill. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

If a city neglected to levy assessments and

pursue the usual and ordinary methods provided by statute for the collection thereof, holders of improvement district bonds could compel it to do so by a mandate, and if the city neglected to collect the assessments after levy, and the property owners became delinquent in payment of their installments, the bondholders could foreclose their lien through the courts. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

50-1721A. Segregation of assessments. — Whenever any land against which there has been levied any special assessment by any municipality shall have been sold in part or subdivided, the council of that municipality shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the municipality which levied the assessment. If the council determines that a segregation should be made, it shall by ordinance order the clerk to make segregation on the original assessment roll as directed in the ordinance. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The ordinance shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the ordinance shall be filed with the county recorder. The council may require, as a condition to the order of segregation, that the person seeking it pay the municipality the reasonable engineering and clerical costs incident to making the segregation. No segregation need be made if the council shall find that by such segregation the security of the lien for such assessment will be so jeopardized as to reduce the security for any outstanding local improvement district obligations payable from such assessment. [I.C., § 50-1721A, as added by 1987, ch. 126, § 1, p. 256.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1987, ch. 126 declared an emergency. Approved March 27, 1987.

50-1722. Bonds — Registered warrants — Interim warrants. — If the council determines to make assessments payable in installments as is provided in section 50-1715, Idaho Code, it shall be [by] ordinance issued in the name of the municipality improvement bonds of the improvement district payable from assessments levied against the property within the district. Such bonds shall be payable each year from and after the date of the bonds and shall be of such denomination and bear interest, payable annually, at such rate as is determined by the council, but in no event shall such rate of interest be greater than the rate of interest borne by the unpaid assessments.

The bonds shall be in such form and denomination as may be provided by the council and they shall mature serially over a period not exceeding thirty (30) years. The council may reserve the right to redeem any of the bonds at its option on any interest payment at such price or prices as determined by the council. The bonds shall be signed by the mayor of the city, the chairman of the board of county commissioners, the president of the highway district, or the chairman of the board of directors of a water and/or sewer district, as the case may be, and shall be countersigned by the treasurer and attested by the clerk of the municipality. No bond or coupon shall be invalid because an officer whose manual or facsimile signature thereon has ceased to hold office at the time of the delivery of the bonds so long as he held the office at the time such signature was placed on the bond or coupon. The coupons attached thereto shall bear the facsimile signatures of said officers and each bond shall have the seal of the municipality affixed thereto. Each bond shall provide that the principal thereof and the interest thereon are payable solely from the principal of an [and] interest on the unpaid assessments levied in the district to pay the total cost and expenses of the project concerned.

In lieu of bonds, registered warrants may be issued under the same circumstances and in the same manner as bonds, such warrants to be issued in payment of any or all costs or expenses of the improvements to the amount said costs or expenses were set out in the engineer's report. The warrants shall be redeemable in numerical order and further shall be subject to all provisions of this code relating to local improvement bonds so far as the same may be applicable, including, but not limited to, the provisions of sections 50-1762 to 50-1769, Idaho Code.

If the council shall determine to issue and sell bonds, it may for the purpose of meeting any cost and expenses of making the improvements, as the same are installed prior to the sale of the bonds, issue interim warrants of the district payable to the contractor, [or] other proper person, upon estimates of the engineer, bearing interest at a rate provided by the council, which interim warrants together with the interest due thereon at the date of the issue of the bonds, shall be redeemed and retired from the proceeds of the sale of the bonds or prepayment of assessments.

Bonds issued hereunder shall have all the requisites of negotiable paper under the Uniform Commercial Code, and shall not be invalid for irregularity or defect in the proceedings for their issuance, sale or delivery, and shall be incontestable in the hands of bona fide purchasers or holders for value thereof. Nothing herein contained shall prohibit any municipality from issuing bonds or warrants in the denomination of one hundred dollars (\$100), or an even multiple thereof, except that bond number 1 of any issue may be of a denomination other than one hundred dollars (\$100). [I.C., § 50-1722, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Cross References. — Negotiable instruments — Uniform commercial code, § 28-3-101 et seq.

Prior Laws. — Former § 50-1722 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of

words "this code," see § 50-1701.

The bracketed words "by" in the first paragraph, "and" in the second paragraph, and

"or" in the fourth paragraph were inserted by the compiler to provide the probable intended words.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Commission on sale.

Impairment of obligation of contract.

Maximum issue.

No constitutional limitation.

Power to issue bonds.

Security.

Warrants payable in numerical order.

Commission on Sale.

Municipal corporation had no authority to pay commission for sale of bonds issued for sewer improvements. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Impairment of Obligation of Contract.

Municipal special assessment district bonds constitute limited liability contracts, obligations of which were impaired by additional taxes on taxpayers in the district for payment thereof. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Maximum Issue.

City council could not issue bonds for construction of sewerage system in excess of contract price and expense. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

No Constitutional Limitation.

Indebtedness of local improvement district was not subject to limitation of Const., art. 8, § 3. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Power to Issue Bonds.

Under former statutes authorizing city to issue municipal improvement district bonds

to run over a period of ten years, the city had power to provide for the issuance of improvement district warrants, which were payable in two years, by a method which coincided with the method provided for by former statute for payment of improvement district bonds. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

Security.

Property in local improvement district constituted sole initial security for payment of special improvement bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Warrants Payable in Numerical Order.

Where a city issued improvement district warrants pursuant to ordinance providing that warrants should be payable in numerical order over a period of two years, the city had the duty to pay the warrants in numerical order, where no question was made at the time of the adoption of the ordinance, as to the power of the city to adopt the same and prescribe the method of payment, and the improvement was made, assessments were levied and collected, and warrants were issued thereunder. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

50-1723. Liability of municipality. — The holder of any bond, issued under the authority of this code, shall have no claim therefor against the municipality by which the same is issued, except to the extent of the funds created and received by assessments against the property within any local improvement district as herein provided and to the extent of the local improvement guarantee fund which may be established by any such municipality under the provisions of this code, but the municipality shall be held responsible for the lawful levy of all special taxes or assessments herein provided and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of the bonds as herein provided. The owners and holders of such bonds shall be entitled to complete

enforcement of all assessments made for the payment of such bonds. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued. [I.C., § 50-1723, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Cross References. — Local improvement guarantee fund, § 50-1762.

Prior Laws. — Former § 50-1723 was

repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code," see § 50-1701.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

City trustee for bondholders.

Embezzlement by clerk.

Federal government acquiring property.

Liability.

Municipal property not subject to special assessments.

Nature of claim.

Security for improvement bonds.

Tax is "trust fund."

Text of bond.

Trust funds.

City Trustee for Bondholders.

A city was a trustee for holders of improvement district bonds to the extent that the city was liable for the proper handling of the funds when collected, but the officers of the city were not acting for the city in levying the assessments and collecting them, but were acting as special agents or instrumentalities to accomplish a public end, and the city was not chargeable with their negligence. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

Embezzlement by Clerk.

A city which permitted its clerk to collect local improvement assessments which were properly paid, in part, to bondholders by the city treasurer could not allege illegality of collection by clerk, rather than by county tax collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk's embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Federal Government Acquiring Property.

Where the United States government in acquiring title to lands within a local improvement district, freed the lands of all liens, including outstanding assessments, and was under no liability at the time for any further reassessments, its action, in withholding from

its vendors a portion of the purchase money pending investigation of the possibility that the land might be liable for a reassessment to pay the balance due on bonds, did not indicate that the government intended to pay bondholders the balance due on the outstanding bonds if it should develop that no lien existed at the date of the acquisition, nor did it give rise to an implied contract to that effect. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

Liability.

Municipality was not liable in damages for failure of its officers in performance of their duties with respect to estimate, assessment and contract for sewer construction, resulting in invalidity of bonds issued to pay cost thereof. *Moore v. City of Nampa*, 18 F.2d 860 (9th Cir. 1927), *aff'd*, 276 U.S. 536, 48 S. Ct. 340, 72 L. Ed. 688 (1928).

Indebtedness was against property of district and was not an obligation of municipality. The city was merely agent or instrumentality for collection and disbursement of the fund from a sewer district and was not liable for damages where officers failed to perform their duty. *Broad v. City of Moscow*, 15 Idaho 606, 99 P. 101 (1908).

Since warrants were not general obligations of municipality within which the district was situated, municipality was not liable be-

cause some of the properties assessed were not of sufficient value to cover their share of liability. *Hughes v. Village of Wendell*, 47 Idaho 370, 275 P. 1116 (1929).

Where special local assessment improvement district bonds were issued and sold, they were not a general obligation of the municipality, but only of the district, in rem, and had for security only the property within the district, and, when the particular assessment levied against any particular individual and piece of property was paid, its share of the bonded indebtedness was liquidated. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Municipal Property Not Subject to Special Assessments.

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Nature of Claim.

Bondholder's claim or lien was a charge in rem only and was not enforceable against the person of the owner nor against the municipality. *Blackwell v. Village of Coeur d'Alene*, 13 Idaho 357, 90 P. 353 (1907); *Broad v. City of*

Moscow, 15 Idaho 606, 99 P. 101 (1908).

Security for Improvement Bonds.

Property in local improvement district constituted sole initial security for payment of special improvement bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Tax Is "Trust Fund."

Funds collected by city through its clerk, by means of improvement district assessments, were "trust funds," pledged exclusively to the payment of the bonds issued against the special assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Text of Bond.

Failure to copy former section governing municipal liability on bonds into bond did not invalidate it. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

Trust Funds.

All funds collected by the city by means of the improvement district assessments were trust funds pledged exclusively to the payment of the bonds issued against the special assessments. *Wheeler v. City of Blackfoot*, 55 Idaho 599, 45 P.2d 298 (1935).

50-1724. Bond and interest funds. — Once bonds are issued as provided herein, any funds paid as installment payments of assessments pledged to the payment of such bonds shall be kept in a fund known as the "bond fund" of the district and any funds paid as interest on said installment payments of assessments shall be kept in a fund known as the "interest fund" of the district. The funds shall be deposited in such bank or banks as are designated as depositories of public moneys of such municipalities under the laws of this state, or invested in bonds or warrants of the municipality. Interest received on such funds so deposited or invested shall be placed to the credit of the fund from which it is earned. Maturing bonds shall be paid from the bond fund and the interest on the bonds, when due, shall be paid from the interest fund. If there is sufficient money in the bond fund to pay the principal of one or more bonds, the treasurer may call in and pay such bonds as of the next interest payment date in such manner as may be provided by the council at the time of the issuance of the bonds. The bonds to be called shall be selected by lot and shall, in the event less than all of the outstanding bonds are to be redeemed, insofar as can be done taking into consideration the denominations of the outstanding bonds, represent an equal amount of bonds from each maturity outstanding at the time of the redemption. [I.C., § 50-1724, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1724 was repealed. See Prior Laws, § 50-1701.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application of funds.

Bond guaranty fund illegal.

City not liable for failure to levy.

Diversion of payments.

Limitations inapplicable in favor of city for failing to collect tax.

Mandamus.

Numerical order payments.

Power to issue bonds.

Warrants payable in numerical order.

Application of Funds.

Funds collected should be applied first to payment of interest on all unpaid bonds, and, second, to redemption of unpaid bonds in their order. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

Bond Guaranty Fund Illegal.

Former section authorizing a municipality to create a bond guaranty fund from general taxes to pay deficiency in local improvement district assessments, without providing for notice to taxpayers, was void as not affording them due process. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

City Not Liable for Failure to Levy.

A city was not liable to holders of improvement district bonds for failure to levy an amount sufficient to take care of the interest thereon. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

Diversion of Payments.

City authorities would have no authority to divert assessments paid by property owners to payment of interest or principal due from abutting property owners who failed to pay their assessments as required by law. *New First Nat'l Bank v. City of Weiser*, 30 Idaho 15, 166 P. 213 (1916).

Limitations Inapplicable in Favor of City for Failing to Collect Tax.

Limitations applicable to a cause of action created by statute were not applicable to an action against a city for value of special assessment bonds, which remained unpaid as result of city clerk's embezzlement of funds, since city's liability was that of trustee, and action brought within four years of city's repudiation of trust was not barred by statute of limitation. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Mandamus.

Mandamus was proper remedy to compel payment of interest and redemption of bonds

upon refusal to do so after funds were available. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

Numerical Order Payments.

Payment of interest and redemption of bonds in their order of issue did not deprive property owners of district of their property without due process of law. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

Holders of improvement district bonds could not complain of payment by a city of certain bonds in their numerical order before maturity years after payment had been made and the fund was insufficient to pay all bonds in full. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

Power to Issue Bonds.

Under former statutes authorizing city to issue municipal improvement district bonds to run over a period of ten years, the city had power to provide for the issuance of improvement district warrants, which were payable in two years, by a method which coincided with the method provided for by statute for payment of improvement district bonds. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

Warrants Payable in Numerical Order.

Where a city issued improvement district warrants pursuant to ordinance providing that warrants should be payable in numerical order over a period of two years, the city had the duty to pay the warrants in numerical order, where no question was made at the time of the adoption of the ordinance as to the power of the city to adopt the same and prescribe the method of payment, and the improvement was made, assessments were levied and collected, and warrants were issued thereon. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

50-1725. Reissue of bonds. — Where any bonds issued under this code are declared invalid or void by order or decree of court, which may be legally reissued, the council of such municipality shall, by ordinance, provide for the reissuance thereof at the same rate of interest and in such amount as will cover the principal and interest due on said bonds, and the ordinance providing for such reissue shall provide for the surrender and cancellation of such bonds upon which there has been a default or which have been declared invalid or void and the lien created by the levy of such assessment or assessments as herein provided shall not be deemed to have been lost or waived by such reissue but shall remain in full force and effect. [I.C., § 50-1725, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1725 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code," see § 50-1701.

50-1726. Rights against assessments. — The said bonds of any local improvement district as herein provided, when sold as hereinbefore provided, shall transfer to the owner or holder of such bonds all the rights and interest of such municipality in and with respect to every such assessment and the lien thereby created against the property of each owner assessed as shall not have availed himself of the provisions of this code, in regard to the redemption of his property as aforesaid, and shall authorize owners and holders of such bonds to receive and have collected the assessment or assessments embraced in any such bonds through any of the methods provided by law for the collection of assessments for local improvements.

Whenever any installment of an assessment or the interest thereon made for the payment of principal, or interest on such bonds so issued, is not paid when due and shall become delinquent, the municipality may by a resolution duly adopted declare all unpaid installments against any property to pay the cost and expenses of such improvement to be immediately due, payable and delinquent, and may thereupon cause a delinquency certificate to be issued against said property for the whole of the unpaid assessment against it in the manner hereinafter provided for issuance of delinquency certificates upon any installment of such assessment(s) becoming delinquent, and any such council must pass such resolution upon the written request of the holders of one-half (1/2) of any such bond issue, filed with the clerk. [I.C., § 50-1726, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1726 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — In the second paragraph, the "s" in the word "assessment's" was

placed in parentheses by the compiler as apparent surplusage.

For meaning of words "this code," see § 50-1701.

50-1727. Publication and conclusiveness of proceedings. — The council may provide for the publication of any ordinance, resolution or other proceeding adopted by it pursuant to this code in the official newspaper of

the municipality. For a period of thirty (30) days after such publication any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby, passed or adopted under the provisions of this code shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the ordinance, resolution or proceeding was published, and after such time the validity, legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of validity of any bonds issued pursuant to this code is not raised within thirty (30) days from the date of publication of the ordinance, resolution or proceeding issuing said bonds and fixing their terms, the authority to issue the bonds, the legality thereof and of the assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. [I.C., § 50-1727, as added by 1976, ch. 160, § 2, p. 567.]

STATUTORY NOTES

Prior Laws. — Former § 50-1727 was repealed. See Prior Laws, § 50-1701.

Compiler's Notes. — For meaning of words "this code," see § 50-1701.

Section 3 of S.L. 1976, ch. 160, read: "All local improvement districts heretofore created or attempted to be created, and all assessments heretofore levied therein or attempted to be levied therein, which have not heretofore been adjudicated invalid, and all notices, assessments and proceedings taken in relation thereto whether void, defective or invalid, in all cases where the improvements contemplated have been made or contracted for, are hereby ratified, validated and confirmed and made sufficient to the same extent as if the same were perfected in the first instance. All acts and proceedings of any municipality had under or by virtue of the

local improvement district code, and all contracts heretofore or hereafter made, and all warrants and bonds heretofore or hereafter issued pursuant to said acts and proceedings, are hereby ratified, validated and confirmed. All sections of the local improvement district code not specifically repealed herein are hereby ratified, validated and confirmed and made sufficient to the same extent as if they had been properly enacted in the first instance."

Section 4 of S.L. 1976, ch. 160, read: "If any section or provision of the hereinafter existing local improvement district code be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of the code as a whole or of any section or provision thereof which is not specifically so adjudged unconstitutional or invalid."

JUDICIAL DECISIONS

ANALYSIS

Statute of limitations.

Waiver.

Statute of Limitations.

The 30-day limitation period of this section has application to a "contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby," and not to a constitutional attack on a statute. Thus, where property owners objecting to the formation of a local improvement district challenged the constitutionality of the authorizing statute (§ 50-1709) itself, the statutory pe-

riod of limitations did not apply. *Mangum v. City of Orofino*, 105 Idaho 307, 669 P.2d 196 (1983).

Waiver.

Failure to contest an ordinance within 30 days results in the waiver of the right to contest the sufficiency of the notice regarding assessment methodology provided by the ordinance. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

50-1728. Consolidated local improvement districts authorized. — Solely for the purpose of issuing bonds, registered warrants, or interim warrants, the governing body of any municipality may authorize the establishment of consolidated local improvement districts. The original local improvement districts so consolidated need not be contiguous. If the council orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within the original local improvement districts shall be deposited in a consolidated local improvement district bond fund and interest fund to be used to pay the principal of and interest on the outstanding consolidated local improvement district bonds or warrants. [I.C., § 50-1728, as added by 1981, ch. 149, § 1, p. 259.]

STATUTORY NOTES

Prior Laws. — Former § 50-1728, which comprised S.L. 1967, ch. 429, § 314, was repealed by S.L. 1976, ch. 160, § 1.

50-1729 — 50-1737. Assessments — Bonds. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 176, § 2, were repealed by S.L. 1976, ch. 160, which comprised S.L. 1967, ch. 429, §§ 315- § 1.
323; am. 1969, ch. 41, §§ 4, 5; am. 1973, ch.

50-1738. Delinquent installments. — If any installment or payment is not made as provided hereinbefore and in default, it shall then become delinquent. [1967, ch. 429, § 324, p. 1249.]

50-1739. Delinquent certificates. — As soon as any assessment or installment thereof, of any local improvement district shall become delinquent, the treasurer shall, if such assessment be collected in one (1) payment, mark the same delinquent on the assessment roll, or if for an installment of an assessment, on the "Local Improvement Installment Docket," and shall add to the amount shown on said assessment roll, or installment docket, a penalty of two per cent (2%) thereon. Within ten (10) days thereafter the treasurer shall prepare and issue to the municipality, in which such local improvement district is located, a delinquency certificate to the property included in each such delinquent assessment or installment, which certificate shall have the force and effect of a sale of said property to the municipality for the amount thereof, said certificate shall bear date as of the time such assessment or installment became delinquent and shall be for the amount thereof plus the penalty charged thereon. Such certificate shall contain, besides the description of the property to be sold, the name of the person assessed, if known, or if unknown, that fact, the amount of the assessment of installment, plus penalty thereon; the number of the assessment and the name of the improvement district in which assessed; the date when such certificate will go to deed and shall bear interest from date thereof at the rate of ten per cent (10%) per annum. Such certificates shall

be made in duplicate, bound together in books in numerical order and filed in the office of the treasurer; provided, that after one (1) such certificate has been issued no further delinquency certificate shall be issued for subsequent installments of the same assessment, except as hereinafter provided, and whenever any subsequent installment shall thereafter become delinquent the treasurer shall so mark the same in the installment docket and add the penalty thereto, as hereinbefore provided, and the same shall draw interest at the rate of ten per cent (10%) per annum from date of delinquency until the end of the month in which it is paid. [1967, ch. 429, § 325, p. 1249.]

50-1740. Delinquent certificate register. — Within twenty (20) days after preparing and issuing any delinquency certificate the treasurer shall enter the same in a book to be kept by said treasurer known as “Local Improvement District Delinquency Certificate Register,” which register shall contain in proper columns, the number of the assessment, the name of the district in which assessed, name of the person to whom assessed, if known, description of the property sold, corresponding with the description in the certificate and the assessment roll, amount of assessment, penalty, and the treasurer must regularly number each entry in said register on the margin of said book and put a corresponding number on each original and duplicate delinquency certificate. Such register must contain blank spaces following each entry of a delinquency certificate therein, in which may be entered the name of an assignee thereof, the date of such assignment and the amount paid the assignee, the name of a redemptioner thereof, the date of such redemption and the amount paid by such redemptioner. Such book or register shall be retained by the treasurer and become a part of the records of his office. From and after entry in such register and until two (2) years from its date, any such certificate, unless redeemed, may be purchased from the treasurer in the manner hereinafter provided. [1967, ch. 429, § 326, p. 1249.]

50-1741. Assignment of delinquent certificates. — Whenever any person shall tender to the treasurer in cash the amount of any such certificate and interest thereon at the rate of ten per cent (10%) per annum from date of such certificate to the end of the month in which such purchase is made, together with any subsequent instalments then due with penalties and interest thereon, the treasurer shall assign such delinquency certificate to the purchaser by making and executing for and on behalf of the municipality the blank assignment on both the original and duplicate thereof, and shall deliver the original certificate so assigned to the purchaser. Whenever the purchaser shall be required to pay subsequent assessments in addition to the amount of such delinquency certificate, the fact of such payment and the amount thereof including penalty and interest, shall be indorsed on the original and duplicate certificate so assigned. Thereafter the treasurer shall immediately make the proper entries showing such assignment in the “Local Improvement District Delinquency Register,” and in the “Instalment Docket”; provided, that past due interest coupons and past due bonds of the local improvement district for which such

certificate was issued shall be received by the treasurer, at par and accrued interest in payment of such certificates. Such bonds and coupons shall be received by the treasurer, at par and accrued interest in payment of such certificates. Such bonds and coupons shall be forthwith canceled by the treasurer. [1967, ch. 429, § 327, p. 1249.]

50-1742. Form of assignment — Assignment by purchaser. — The assignment prescribed by the preceding section must be substantially in the following form, and indorsed on the certificate:

ASSIGNMENT BY TREASURER

State of Idaho ss.
Municipality

For and in consideration of the sum of \$ paid to said municipality, the receipt whereof is hereby acknowledged, I do hereby assign to whose post-office address is all the right, title and interest of the said municipality in and to the within and foregoing delinquency certificate.

In witness whereof, I have hereunto set my hand at, Idaho, this day of,

.....
Treasurer of the municipality of
.....

Such delinquency certificate may be assigned by the purchaser; provided, that such assignment must be attached to the original delinquency certificate and a duplicate of such assignment must be delivered to the treasurer who must attach the same to the duplicate delinquency certificate in his office.

The assignment of any delinquency certificate by the purchaser thereof or any assignee of such purchaser must be executed in duplicate and acknowledged as provided by law in the conveyance of real property and such assignment must be substantially in the following form, to wit:

“For value received, I hereby assign to whose post-office address is, all my right, title and interest in and to delinquency certificate No., issued by the treasurer of, Idaho, on account of delinquent local improvement district assessments for the year on the property described in said certificate.

In witness whereof, I have hereunto set my hand this day of,”
(acknowledgment)

[1967, ch. 429, § 328, p. 1249; am. 2002, ch. 32, § 23, p. 46.]

50-1743. Redemption. — At any time within two (2) years from the date of any delinquency certificate, the owner of the property described therein, or any one on his behalf, may redeem such property by paying to the treasurer the amount stated in such certificate together with interest thereon at the date [rate] of ten per cent (10%) per annum, from date thereof

to the last day of the month in which such redemption is made. Thereupon the treasurer shall issue to the redemptioner a certificate of redemption which shall state the name of the redemptioner, the date of redemption, the number of the certificate so redeemed, the description of the property contained therein, and the name of the district for which said certificate was issued. In case said certificate has not been assigned, the treasurer shall note such upon the original and duplicate delinquency certificate; if assigned upon the duplicate certificate the fact that the same has been redeemed, the date of redemption and shall note the same upon the "Local Improvement Delinquency Certificate Register" and the "Local Improvement Instalment Docket"; provided, that no redemption of any such certificate shall be allowed unless all assessments which have become due subsequent to the one for which said delinquency certificate shall have been issued with penalties, and interest at the rate of ten per cent (10%) per annum from date of said delinquency to the end of the month in which the same is redeemed, shall be paid, which fact together with the amount paid shall be stated upon the redemption certificate. The money received from the redemption of any property described in a certificate which has been assigned shall be deposited by the treasurer to the credit of the person named in the last assignment of such certificate. The treasurer shall thereupon give notice to such person at the address shown by the record of such deposit, and such person shall thereafter be paid the same by the treasurer upon surrender of such certificate to the treasurer who shall mark the same "Paid" and hold it as a voucher. [1967, ch. 429, § 329, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "rate", in the first sentence, was inserted by the compiler as the probable intended word.

50-1744. Deed. — If the property described in any delinquency certificate is not redeemed within two (2) years from the date thereof, the treasurer, after having given notice hereinafter required, shall issue a deed thereto to the municipality, or if the same has been assigned as hereinbefore provided, then to the person holding the original delinquency certificate under assignment, upon request therefor, and upon the delivery to the treasurer of such original certificate and filing proof of having given notice as required by the treasurer before making a deed to the municipality. Such deed shall recite substantially the matter contained in the certificate and that no person redeemed the property within the time allowed, by law, for its redemption. It shall be signed and acknowledged by the treasurer in the manner required, by law, to entitle the same to be recorded under the laws of this state; provided, that such deed shall not be issued to an assignee until he has paid all subsequent instalments and assessments then delinquent or due upon the property described in the delinquency certificate, together with the penalties and interest thereon. Such deed to an assignee shall be made subject to all unpaid instalments not then due. [1967, ch. 429, § 330, p. 1249.]

50-1745. Notice of expiration of time of redemption. — The treasurer shall, at least one (1) month and not more than three (3) months before the expiration of the time of redemption of any property, serve or cause to be served, a written or printed, or partly written and partly printed notice on the person or persons in the actual possession or occupancy of such land or lots, and shall also, within the same time, serve upon or mail to, the person in whose name the same stands upon the assessment records in the county assessor's office, a copy of said notice; which notice shall state when the delinquency certificate was made, in whose name the property was assessed, the description of the land or lots, the name of the local improvement district for which assessed, the amount of the assessment or instalment, and when the time of redemption will expire. The treasurer shall at the same time send a similar notice, by mail, to each mortgagee or other holder of a recorded lien against such land, in each case where such mortgagee or lienholder has previously filed in the office of the treasurer a written request for such notice and paid the fee therefor, which request shall include the name and address of the mortgagee, the name of the reputed owner of the land, a description of the land and the date of the expiration of the mortgage or lien; no notice need be sent after the date of expiration, unless a further request therefor be duly filed. If the mortgagee or lienholder shall furnish a duplicate form of request for that purpose the treasurer shall certify thereon to the filing of the request and deliver the same to the party filing it. If there is no person in actual possession or occupancy of such land or lot and if the persons in whose name it stands, upon diligent inquiry cannot be found in the state, then the treasurer shall, within the same time, post or have posted, a copy of said notice in a conspicuous place upon said land or lots and in a substantial manner.

Whenever any notice is mailed, as herein required, the fact that the addressee does not receive it, shall not in any manner invalidate or affect the proceedings herein provided. [1967, ch. 429, § 331, p. 1249.]

50-1746. Proof of notice. — The treasurer shall, before issuing any deed to the municipality, make and file his affidavit showing a full compliance with the requirements of the preceding section as to giving notice of the expiration of the period of redemption; before issuing a deed to the holder of any delinquency certificate, the treasurer shall require that affidavits be filed showing a complete compliance with the provisions of the previous section as to giving such notice. Such proof shall be filed in the office of the treasurer and remain a permanent record in such office. Any person making a false affidavit as to any fact required herein shall be guilty of perjury. [1967, ch. 429, § 332, p. 1249.]

STATUTORY NOTES

Cross References. — Perjury, § 18-5401
et seq.

50-1747. Effect of deed as evidence. — The matters recited in the delinquency certificate must be recited in the deed and such deed duly

acknowledged or proved shall be prima facie evidence: (1) that the improvement district was created, the assessment made and the work and improvement done in the manner provided by law; (2) that all notices were given, all hearings were had, orders made and resolutions and ordinances passed and adopted required by law, and that all the proceedings up to the execution and delivery of such deed were had and done in the manner required by law; (3) that the assessments were not paid, the delinquency entries were properly made and delinquency certificate properly issued, as prescribed by law, and by the proper officer; (4) that the property was not redeemed, that the notice required to be given before deed was taken was properly given as required by law, and that the person who executed the deed was the proper officer. [1967, ch. 429, § 333, p. 1249.]

50-1748. Delinquency certificate for subsequent instalments. —

Whenever any delinquency certificate has been assigned, as hereinbefore provided, and the time for redemption has expired and there are outstanding against the property covered by said certificate, any delinquent instalments subsequent in time to the instalment for which the property was sold, then the treasurer shall issue to the municipality a delinquency certificate for such past due instalments in the same manner, as hereinbefore provided, and shall cancel the previous delinquency certificate and the same shall be of no further force and effect. Such delinquency certificate for subsequent instalments may be assigned in the same manner, as hereinbefore provided, and have the same force and effect. [1967, ch. 429, § 334, p. 1249.]

50-1749. Fees of treasurer. — The treasurer shall receive the following fees, which, when paid, shall be credited to the general fund of the municipality: for issuing any delinquency certificate twenty-five cents (25¢) to be included in the amount of the certificate; for making any deed one dollar (\$1.00), to be paid by the person to whom made; for giving notice to a mortgagee or lienholder fifty cents (50¢), to be paid by such person; for giving notice of expiration of period of redemption one dollar (\$1.00). In all cases where the property is deeded to the municipality the fees shall be charged to the amount for which the deed is taken and shall be paid upon the sale of the property, or the sale of the delinquency certificate. [1967, ch. 429, § 335, p. 1249.]

50-1750. Suit to quiet title. — Whenever the necessary costs and attorney's fees have been advanced by the holders of the bonds of the district or any prospective purchaser or other person, it shall be the duty of the council of such municipality to cause the attorney to commence suit to quiet title to the property described in said deed in the name of the municipality and to secure the possession of the property; provided, that the property described in any number of tax deeds so made to the municipality and against any number of owners of property may be included in the same suit. [1967, ch. 429, § 336, p. 1249.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Quiet Title Action, Offset Against Rent.

In a suit to quiet title and recover possession of realty as against a grantee of an invalid deed, issued to purchaser of delinquency certificate for amount of invalid improvement assessments, amount paid by grantee for delinquency certificate, deed, re-

cording fee, and taxes on and improvement of property was required to be deducted from the amount due owners by grantee as rental for use and occupation of the premises. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

50-1751. Sale of property deeded to municipality. — At any time after acquiring title and possession of any property, as hereinbefore provided, the municipality may sell such property to any purchaser upon receiving therefor a sum not less than the amount for which the property was sold to the municipality and by the payment of all instalments of assessments subsequent to the one (1) for which such property was sold and then due together with the penalties and interest thereon. The purchaser shall take such property subject to any unpaid general taxes and assessments and to all local improvement district instalments not then due, and the municipality shall thereafter collect such instalments in the manner provided by this code. When such purchase is made and the money paid therefor, the municipality shall issue a deed to the purchaser signed by the mayor and attested by the clerk, which deed shall be executed and acknowledged in the manner required, by law, to entitle the same to be recorded under the laws of this state.

In selling such property and in conveying title thereto compliance with the procedures set forth in chapter 14, title 50, Idaho Code, shall not be required, but no conveyance under this section shall be valid unless it be approved by an affirmative vote of one-half (1/2) plus one (1) member of the full city council. [1967, ch. 429, § 337, p. 1249; am. 1973, ch. 61, § 1, p. 101.]

STATUTORY NOTES

Cross References. — Lien of assessment, foreclosure, § 50-1721.

Compiler's Notes. — For meaning of the words "this code," see § 50-1701.

Effective Dates. — Section 2 of S.L. 1973, ch. 61, p. 101 provided the act should take effect on and after July 1, 1973.

50-1752. Sale of property after maturity of bonds. — Within thirty (30) days after the maturity of the last instalment of any issue of bonds of a local improvement district, if any such bonds or interest coupons shall remain unpaid, any property remaining unsold, to which the municipality has taken title by reason of assessment of such improvement district, shall be appraised and immediately after said appraisal such property shall be offered for sale by giving notice of the time and place of sale thereof by publication of such notice in a newspaper published in the municipality for ten (10) consecutive issues if a daily paper, or in two (2) consecutive issues if a weekly paper, or if there be no newspaper published in such municipality then in a newspaper having general circulation therein, the date of sale to be not less than twenty (20) days from the date of the first publication of

such notice. At the time and place designated in the notice the treasurer shall offer such property for sale to the highest bidder, but no sale shall be made for less than the appraised value. If no bid be received for a sum equal to or greater than the appraised value, then the sale may be postponed for not to exceed thirty (30) days, and shall be readvertised, and at the time to which such sale was postponed shall again be offered for sale and sold to the highest bidder. Upon the sale of any property and the payment therefor, a deed shall be executed to the purchaser in the same manner, as provided for the execution of deeds in section 50-1751[, Idaho Code]. [1967, ch. 429, § 338, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion at the end of the section was added by the compiler to correct the statutory citation style.

50-1753. Disposition of funds. — All money received by the treasurer on account of the payment of assessments or instalments thereof, the assignment or redemption of delinquency certificates, or for rents, issues and profits, or from the sale of any property, title to which is held by the municipality for the benefit of any local improvement district, less any expenses of securing possession of said property, or for the care and operation and sale of the same, shall be deposited to the credit of the interest fund and bond fund of the local improvement district, in the same proportion as the assessment or instalments for which the property was taken. Any money left in a local improvement district interest or bond fund or any money derived from the rental or sale of any real property acquired by the municipality through the sale for delinquent assessments or instalments shall, after all warrants, bonds and coupons of said district have been paid in full, be credited to the general fund of the municipality. [1967, ch. 429, § 339, p. 1249.]

STATUTORY NOTES

Cross References. — County bond and interest funds, § 50-1724.

50-1754. Delinquent certificate not assignable during pendency of action. — No certificate of delinquency as hereinbefore provided, shall be assigned, or any property sold, to which the municipality has taken a deed, on account of any assessment, or instalment thereof, during the pendency of any proceeding in court affecting the validity of such assessment. [1967, ch. 429, § 340, p. 1249.]

50-1755. Duties of officers. — When the council shall decide that it is to the best interest of the municipality that the duties in this code designated to be performed by the treasurer should be done and performed by the clerk of such municipality, they may at their option, by resolution, duly presented and approved by such council assign such duties to the clerk of such municipality; provided, that the duty of receiving any funds collected

by the clerk and the depositing and disbursing of such funds by order of the council shall always be and remain the duty and responsibility of the treasurer; the council shall, in said resolution, devise a proper system or plan whereby the clerk may pay to the treasurer all moneys collected by him and take receipts therefor. [1967, ch. 429, § 341, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For meaning of the words "this code," see § 50-1701.

50-1756 — 50-1761. Prior districts — Construction — Separability — Validation — Limitation on assessments. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 346, 354, were repealed by S.L. 1976, ch. 160, which comprised S.L. 1967, ch. 429, §§ 342- § 1.

50-1762. Local improvement guarantee fund — Creation of fund. — Any municipal corporation, including chartered municipal corporations, may by general ordinance of appropriation or by levy of a tax of not to exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property within the municipal corporation in any one (1) year, or by appropriation from such other sources as may be determined by the council, create a fund for the purpose of guaranteeing to the extent of such fund, the payment of bonds or warrants and interest thereon, hereafter issued against any local improvements therein; provided, that such sum so levied or appropriated in any year shall be more than sufficient to pay the outstanding warrants of said fund and to establish therein a balance, which combined levy and appropriation in any one (1) year shall not exceed five percent (5%) of the outstanding obligations thereby guaranteed; provided, further, that the council shall not levy any tax as herein provided when the amount of moneys in the "Local Improvement Guarantee Fund" equals ten percent (10%) of the total outstanding obligations thereby guaranteed. The tax levies herein authorized and directed shall be additional to and, if need be, in excess of any and all statutory and charter limitations. The fund so created shall be designated "Local Improvement Guarantee Fund." [1967, ch. 429, § 347, p. 1249; am. 1995, ch. 82, § 25, p. 218.]

50-1763. Bonds, warrants and coupons, when paid out of fund — Nonpayment for want of funds — Interest. — Whenever any municipality has established such "Local Improvement Guarantee Fund," any bond, warrant or coupon drawn against any local improvement fund is presented to the municipality for payment and there is not sufficient amount in said local improvement fund against which to draw to pay the same, unless otherwise requested by the holder, payment therefor shall be made by warrant drawn against the "Local Improvement Guarantee Fund." Such warrants when presented to the city treasurer for payment, if not paid,

shall be registered and draw interest at a rate as may be fixed by the council. Neither the holder nor the owner of any bond or warrant issued under the provisions of this act shall have any claim therefor, except for payment from the special assessments made for the improvement for which said bond or warrant was issued, and except as against the "Local Improvement Guarantee Fund" herein provided, and the municipality shall not be liable to any holder or owner of such bond or warrant for any loss to the guarantee fund occurring in the lawful operation thereof by the municipality. [1967, ch. 429, § 348, p. 1249; am. 1980, ch. 61, § 10, p. 118.]

STATUTORY NOTES

Compiler's Notes. — The term "this act", in the second sentence, refers to S.L. 1976, ch. 160, which is codified as §§ 50-1701 to 50-1703, 50-1704 to 50-1706, 50-1707 to 50-1721, and 50-1722 to 50-1727.

Effective Dates. — Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

50-1764. Subrogation of municipality to rights of payee — Surplus funds — Payment into fund — Preferences. — Whenever there shall be paid out of the "Local Improvement Guarantee Fund," any sum on account of principal or interest of a local improvement fund or warrant, the municipality as trustee for the fund, shall be subrogated to all the rights of the holder of the bond or interest coupon or warrant so paid, and the policies thereof, or the assessment underlying the same, shall become part of the guarantee fund. There shall be paid into the guarantee fund any surplus remaining in any local improvement fund after the payment of all outstanding bonds or warrants, payable out of such local improvement fund. Bonds or warrants guaranteed by such fund shall have no preference except in the order of presentation for payment. [1967, ch. 429, § 349, p. 1249.]

50-1765. Maintenance and operation and sources of fund. — The council shall prescribe rules and regulations for the maintenance and operation of the guarantee fund not inconsistent herewith. After the creation of such fund, all money derived from the assignment of delinquency certificates, redemptions, sale of property under foreclosure for delinquent assessments, or from the rent or sale of property, title to which has been obtained by the municipality pursuant to this code, shall be paid into the "Local Improvement Guarantee Fund," and all delinquency certificates issued and such property acquired shall be held by the municipality for the benefit of such guarantee fund. Money from the guarantee fund may be used to redeem property subject to local improvement assessments from general tax delinquencies, underlying bonds or warrants guaranteed by the fund, or to purchase such property as [at] county tax sales or otherwise, from the county for the purpose of protecting the guarantee fund. After so acquiring title to real property, the municipality may lease or sell and convey the same for such price and on such terms as may be determined by the council, and any provision of law, charter or ordinance to the contrary notwithstanding, and all proceeds resulting therefrom shall belong to and be paid into the guarantee fund, provided, however, that in any event the municipality

purchases such property at tax sale or otherwise it shall not be sold for a lesser sum than the city paid therefor. [1967, ch. 429, § 350, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word “at”, in the third sentence, was inserted by the compiler as the probable intended word. For meaning of the words “this code,” see § 50-1701.

50-1766. Replenishment of fund — Warrants — Issuance against fund — Tax levy. — Whenever there is not a sufficient amount of cash in said “Local Improvement Guarantee Fund,” at any time to pay any and all warrants, together with interest thereon, drawn against said fund, the council may replenish said “Local Improvement Guarantee Fund” by transferring or appropriating to it, moneys from the general fund of the municipality or other available sources, as may be determined by said council, subject, however, to the limitations herein prescribed. Warrants drawing interest, as herein provided, may be issued against said “Local Improvement Guarantee Fund” to meet any financial liability against it; but at the time of making its next annual levy the municipality shall provide for the levy of a sum sufficient with other resources of the guarantee fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed two hundredths percent (.02%) of the market value for assessment purposes on taxable property within the municipal corporation in any one (1) year. [1967, ch. 429, § 351, p. 1249; am. 1995, ch. 82, § 26, p. 218.]

50-1767. Bonds and warrants — Revenues from which payable. — The holder or owner of any local improvement bond or warrant shall have no claim thereon against the municipality by which the same is issued, except to the extent of the funds created and received by assessments against the property within any local improvement district and to the extent of his pro rata share of any “Local Improvement Guarantee Fund,” authorized and created under the provisions of this code. [1967, ch. 429, § 352, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For meaning of the words “this code,” see § 50-1701.

50-1768. Bonds payable from fund. — Whenever a municipality has created a “Local Improvement Guarantee Fund,” under the provisions of [this act,] any local improvement district bonds issued thereafter shall provide that the principal sum of such funds [bonds] and the interest thereon shall be payable out of the local improvement fund created for the payment of cost and expenses of the improvement or out of any “Local Improvement Guarantee Fund,” duly authorized and created, and not otherwise. [1967, ch. 429, § 353, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed words "this act" and "bonds" were inserted by the compiler to provide language obviously missing from the original enactment. For meaning of "this act", see Compiler's Notes, § 50-102.

50-1769. Excess in fund — Disposition. — When a "Local Improvement Guarantee Fund" duly created in any municipality exceeds in amount of moneys held therein ten per cent (10%) of the total outstanding obligations thereby guaranteed, then the council, may, by ordinance, authorize the treasurer or appropriate official of said municipality to return and pay such said excess or any part thereof to the general fund of said municipality to return and pay such said excess or any designated part thereof all or any part of local improvement district bonds of said municipality then issued and outstanding or to be issued. The passage of such ordinance shall require the affirmative vote of at least three-fourths (3/4) of the full council. [1967, ch. 429, § 355, p. 1249.]

50-1770. Unpatented lands — Assessment for improvements. — Whenever any of the public lands are embraced within the boundaries of any city of this state, and the city authorities deem it necessary that a sewer system, street improvements or other public improvements of any kind, authorized by general law, be made therein for the preservation of the health, accommodation or convenience of such inhabitants, the city council may, by ordinance, provide for the assessment of a portion of the expense of such improvement against unpatented lots, blocks or parcels of land, and the improvements thereon, embraced within the limits of such city, to the same extent and amount as though such lands were patented. When patents issue for such lands the lien of the assessment against each lot, piece and parcel of land shall attach immediately and be enforced and collected as other taxes, or as provided, by ordinance, of such city; provided, this section shall not apply nor authorize the creation of any lien upon state lands. [1967, ch. 429, § 48, p. 1249.]

50-1771. Reserve fund authorized. — For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants, or other short-term obligations, the council or other governing body of a governmental entity may create a reserve fund for each obligation in addition to or in lieu of a guarantee fund. The reserve fund shall be separate and apart from any guarantee fund and in an amount not exceeding ten per cent (10%) of the principal amount of the bonds, notes, or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be funded from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor. Reserve fund balances in excess of ten per cent (10%) of the principal amount of the bonds outstanding shall be used to reduce the annual assessments of those participants in the

respective local improvement district whose prior assessments have been paid. Whenever the reserve fund is insufficient to meet claims for payment of principal and interest against the reserve fund, the governmental entity may appropriate funds from such other legally available sources as may be determined by the council or governing body of such governmental entity. [I.C., § 50-1771, as added by 1988, ch. 326, § 1, p. 988.]

50-1772. Commercially reasonable credit assurances. — If requested by the petitioners for a local improvement district, and in addition to or in lieu of a reserve or guarantee requirement, the council or other governing body of a governmental entity may impose such commercially reasonable credit assurances as it may deem necessary as a condition of approving a local improvement district. If commercially reasonable, such assurances may include guarantees, letters of credit or bonds in amounts up to the total amount of indebtedness. [I.C., § 50-1772, as added by 1999, ch. 291, § 9, p. 722.]

CHAPTER 18

CITY IRRIGATION SYSTEMS

SECTION.

- 50-1801. City irrigation system authorized.
- 50-1802. City control — Petition.
- 50-1803. Assignment of water stock to city.
- 50-1804. City water certificate.
- 50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments.
- 50-1805A. Pooling of water rights for delivery — Uniform method of allocation of assessments and charges — Allocation and accounting for bonded or contract indebtedness.
- 50-1806. Apportionment of costs.
- 50-1807. Levying of annual assessments to defray operating and maintenance costs.
- 50-1808. Issuance of coupon bonds.
- 50-1809. Control of ditches.
- 50-1810. Power of city to prescribe penalties for interference.
- 50-1811. Board of correction — Changes in assessment books.
- 50-1812. Correction of irregularities upon giving notice — Omissions.
- 50-1813. Assessments as prior liens.
- 50-1814. Notice of time assessments become due — Apportionment of assessments.
- 50-1815. Entry of delinquent assessments and penalties — Amounts of penalty and interest.
- 50-1816. Certificate showing amount of collections and delinquencies.
- 50-1817. Compilation of alphabetical list of delinquencies.

SECTION.

- 50-1818. Certified copy of delinquency list filed — Fee.
- 50-1819. Redemption of lands.
- 50-1820. Unredeemed property deeded to city.
- 50-1821. Notice of pending tax deed.
- 50-1822. Affidavit of compliance by treasurer.
- 50-1823. Tax deed — Form and contents — Title conveyed.
- 50-1824. Deed prima facie evidence of regularity.
- 50-1825. Deed to city — Recitals and form.
- 50-1826. Sale of land by city.
- 50-1827. Payment of state and county taxes by city — Repayment upon redemption — Sale by county for taxes.
- 50-1828. Disposal of funds from sales.
- 50-1829. Action to quiet title against or test validity of assessment — Tender.
- 50-1830. Assessment of city irrigation systems by irrigation district.
- 50-1831. Adjustment and settlement of accounts with irrigation system in operation.
- 50-1832. Ordinances or resolutions establishing boundaries.
- 50-1833. Diversion works for city irrigation system.
- 50-1834. Manner of acquiring or establishing city irrigation system — Power of cities.
- 50-1835. Separability.

50-1801. City irrigation system authorized. — Any city within the state of Idaho is hereby authorized, in the whole or part of the city to establish a city irrigation system and to extend the boundaries within which it will supply and deliver irrigation water; to acquire by purchase, contract, eminent domain or otherwise and to operate, maintain, construct, improve, enlarge and extend an irrigation system to supply water to a part or all of the lands, lots, parcels and pieces of real estate within the limits of such city; to acquire by appropriation, purchase, contract, eminent domain or by any other lawful means not herein enumerated any of the public or private waters of the state of Idaho whether such waters are surface or subterranean waters; to acquire, extend, enlarge, maintain and operate any canals, ditches, conduits and rights of way for ditches, canals and conduits by contract, deed, eminent domain or any other lawful means for the use of such city in supplying water to and distributing the same throughout the city. [1967, ch. 429, § 356, p. 1249.]

STATUTORY NOTES

Cross References. — Irrigation districts, title 43, Idaho Code.

Irrigation generally, title 42, Idaho Code.

Local improvement districts, § 50-1701 et seq.

Prior Laws. — Section 472 of S.L. 1967,

ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-1802. City control — Petition. — Every city in the state of Idaho shall have the power by and through its council, upon a petition signed by a majority of the owners or representatives of owners of real property within any city receiving water by distribution from any ditch or canal, whether such ditch or canal be privately or otherwise controlled: to regulate, control and supervise the distribution of all water used by the inhabitants thereof for irrigation purposes; to convey the same by ditches, laterals, pipes, aqueducts, flumes, culverts or other feasible means, through the public streets, avenues and alleys; to apportion such irrigation water among such inhabitants; to regulate the distribution, and otherwise supervise, control and distribute such irrigation water in such a way as to promote the general welfare of the inhabitants of such city. [1967, ch. 429, § 357, p. 1249.]

50-1803. Assignment of water stock to city. — Where the inhabitants of a city own stock in irrigation or canal companies supplying them with irrigation water for use therein, and desire to receive the benefit of the provisions of sections 50-1801 through 50-1835[, Idaho Code], it shall be necessary for such owners of irrigation and canal companies' stock to assign the same over to the city in trust for their use and benefit. Thereafter such city will represent such inhabitants or owners at all stockholders meetings of such irrigation or canal companies, pay all assessments levied against such assigned stocks by such canal or irrigation companies for upkeep or maintenance expense thereof, and thereafter assume full control of conveying, apportioning, regulating and distributing such water to the inhabitants of such city.

If said city subsequently constructs a substitute system whereby irrigation water is supplied to all or a part of said properties from another source, or said city council determines that all or a part of the system need not be continued, then such city may sell, in accordance with chapter 14, title 50, Idaho Code, or lease all or a part of such canal or irrigation company's stock so assigned to it in trust so long as said water can be physically transferred in accordance with the statutory requirements governing water transfers by irrigation and canal companies. All proceeds from any sale or lease shall be used by said city for the benefit of its inhabitants. [1967, ch. 429, § 358, p. 1249; am. 1972, ch. 300, § 1, p. 748.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the first paragraph was added by the compiler to correct the statutory citation style.

Effective Dates. — Section 2 of S.L. 1972, ch. 300 declared an emergency. Approved March 27, 1972.

50-1804. City water certificate. — In lieu of such stock so assigned to such city, it shall issue to such assignors a city water certificate, showing such assignor to be entitled to all the water to which he was originally entitled under the certificates [of such canal or irrigation companies, which municipal water certificates] shall be signed by the mayor and clerk of the city, with the corporate seal thereof affixed, guaranteeing to the owner or holder thereof his full property rights concerning the use and benefit to be derived from the water he originally enjoyed under such assigned certificate. Such city water certificate issued in accordance herewith and city ordinances passed in pursuance hereof, shall be prima facie evidence in all courts of law and equity, of the right of the owner and holder thereof to the ownership, use and benefit of the water guaranteed thereby, subject only to the power of the city in which the same is used to convey, control, distribute and apportion the same in accordance with the provisions of this chapter. [1967, ch. 429, § 359, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed words, in the first sentence, which were inserted by the compiler, seem to be necessary

to complete the sense of this section. Such words appeared in the former law from which this section was derived.

50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments. — Every city incorporated under the laws of the state of Idaho shall have the power to enter into a contract in writing with an irrigation district organized or hereafter organized under the laws of the state of Idaho, or with any person, association or corporation where water has been purchased or is being furnished or used for lands within said irrigation district and within the boundaries of any such city, whereby such city shall assume the duty of the distribution of such water to the persons within such city having the right to the use thereof, and to receive such water at such place as shall be provided for in such contract. Such city may enter into a contract with any

irrigation district to act as the agent of the irrigation district and be empowered to collect any or all assessments or charges which such irrigation district shall be authorized by law to levy upon all or any part of the lands within such city. Such assessments shall be entered upon the assessment roll as herein provided under an appropriate column to be known as "_____ Irrigation District Assessments" and shall remit to such irrigation district, annually or at more frequent intervals as the contract may provide[,] all moneys collected on account of such levy for the previous year or other remittance period provided by the contract, less the commission contracted to be paid for such collection. If the assessments become delinquent and the property is redeemed from such delinquency, the city shall remit the proportionate part of the amount collected on such delinquency, as the amount due for bonds and interest on such parcels of property shall bear to the other assessments contained in the original tax levy. If a tax deed is taken by the city and thereafter the property so taken is sold as provided in sections 50-1801 through 50-1835, Idaho Code, the irrigation district shall likewise receive its proportionate part of the sale price of such property so sold. Such city shall be entitled to compensation, for collecting assessments and making payments to the irrigation district, in an amount equal to the actual cost which the city incurred in collecting and making such payments. The city shall certify to the district annually, not less than three (3) weeks before the date set for making the annual assessment by the district, the amount set by the city as the cost of collecting and making such payments to the district, and that amount shall be included by the district in its assessments or charges for that year against the lands for which the city collects and makes payments to the district as provided by the contract. Nothing in sections 50-1801 through 50-1835, Idaho Code, shall be construed to make said city primarily liable for any such irrigation district assessments to be collected or obligations, except for the faithful remittance of the funds collected; provided, however, that under contracts where water rights are pooled for delivery and a uniform method of allocating the assessments and charges of the district has been adopted as authorized by section 50-1805A, Idaho Code, the city shall be primarily liable for all such irrigation district assessments to be collected, including operation, maintenance, and principal and interest on bonded or contract indebtedness. [1967, ch. 429, § 360, p. 1249; am. 1981, ch. 31, § 1, p. 48.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma in the third sentence of this section was inserted by the compiler for clarity.

50-1805A. Pooling of water rights for delivery — Uniform method of allocation of assessments and charges — Allocation and accounting for bonded or contract indebtedness. — Except where a landowner makes a timely written demand for delivery of water in accordance with the water right or water rights allocated and made appurtenant to his lands, water rights may be pooled for delivery purposes, but such pooling shall not

be deemed a change in place of use and shall not require compliance with sections 42-108 or 42-222, Idaho Code. Failure of a landowner to make written demand for delivery of water in accordance with the water rights allocated and made appurtenant to his land, on or before March 1 of the applicable year, shall be deemed consent by that landowner to the pooling of water rights for delivery purposes as provided in this section. When water rights are pooled for delivery, the city shall adopt a uniform method of allocating the assessments and charges of the irrigation district against all lands for which water rights are thus pooled. The city shall furnish the district a certified list or map showing all lands for which water rights have been pooled and shall indicate that a uniform method of allocating assessments and charges has been established; and subsequent assessments and charges of the district against those lands shall be levied or made as if all such lands constituted a single parcel, but the assessments and charges of the district shall be allocated by the city proportionately and separately for each actual parcel of such lands, according to the list and apportionment of benefits made by the district for the applicable assessment or charge, and no lien shall attach to any parcel except for assessments or charges properly allocated to that parcel. [I.C., § 50-1805A, as added by 1981, ch. 31, § 2, p. 48.]

50-1806. Apportionment of costs. — To defray the expense of conveying, controlling, distributing and apportioning such irrigation water as herein provided, the city may assess and apportion the cost thereof against the several water user [users] or landowners using the same, according to the length of time each user or landowner may use such water, and collect such money and keep it in a separate fund to be known as the "Irrigation Fund" of such city for the purpose of paying such expense, including the assessment of the canal or irrigation companies who furnish such city with water for upkeep and maintenance thereof, upon the assigned stock held by such city, provided, that such city may pay said expense out of the general fund and provide for such payment through the general levy, if a majority of the city council so determine. [1967, ch. 429, § 361, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "users" was inserted by the compiler as the probable intended word.

50-1807. Levying of annual assessments to defray operating and maintenance costs. — The clerk of such city which shall acquire and operate a city irrigation system under sections 50-1801 through 50-1835, Idaho Code, shall act as the assessor of such irrigation system and shall, on or before the fourth Monday of January of each year, prepare an assessment book containing a full and accurate list and description of all of the lots, parcels, pieces and tracts of land within the boundaries of such city irrigation system to which irrigation water is being supplied by such system, and a list of the persons who own, claim or have in possession or control

thereof during said year, giving the number of acres in the unplatted portion of such city and the number of the lots and blocks within the boundaries of such city irrigation system listed to each person. The mayor and council of such city shall, on or before the second Wednesday of February of each year, meet and make an estimate of the necessary funds for the expenses of maintaining, operating, improving, extending and enlarging said city irrigation system for the current fiscal year. Said estimate shall also include a reasonable sum not to exceed ten percent (10%) of the total estimate for anticipated unpaid and delinquent taxes and such sum as may be necessary to retire outstanding warrants, indebtedness, sinking funds, bonds and interest of a city irrigation system, and shall spread the same upon their minutes and shall thereupon apportion to each lot, piece or parcel of land within the boundaries of such irrigation system in proportion to the benefits received by such lot, piece or parcel of land growing out of the maintenance and operation of such irrigation system. Such assessment shall be immediately carried out by the city clerk and entered under appropriate columns on the assessment roll. Said assessment roll shall contain an appropriate column for each item assessed and shall be subject to review by the mayor and council of the city as hereinafter provided. On or before the first day of March of each year the city clerk must give notice of the time the mayor and council shall meet to correct the assessments so made; said notice shall be published twice at intervals of not less than six (6) days in the official newspaper to give notice when the mayor and council will meet to correct such assessments so levied and assessed as herein provided. The time fixed for such meeting shall not be later than the twentieth day of March of each year and in the meantime the assessment books shall remain in the office of the city clerk for the inspection of any person interested. [1967, ch. 429, § 362, p. 1249; am. 2001, ch. 186, § 1, p. 648.]

50-1808. Issuance of coupon bonds. — Every city shall have power and authority to issue coupon bonds in a sufficient amount to acquire by purchase, contract, eminent domain or otherwise, and to construct, improve, enlarge, alter and extend irrigation water, waterworks and an irrigation system for such corporation and an irrigation water supply therefor. [1967, ch. 429, § 363, p. 1249.]

50-1809. Control of ditches. — To fully carry into effect the purposes of sections 50-1801 through 50-1835[, Idaho Code,] every city shall have power to construct, enlarge, diminish, alter or change all irrigation ditches, aqueducts, pipelines, flumes, canals or laterals within its corporate limits that may be necessary to convey, control, distribute, apportion and regulate such irrigation water to the inhabitants thereof in accordance herewith. [1967, ch. 429, § 364, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1810. Power of city to prescribe penalties for interference. — Such city after taking over the control, conveyance, distribution and regulation of such irrigating water, shall have power, by ordinance, to declare it a misdemeanor for any unauthorized person to meddle, dam, turn, interfere, or in any manner tamper with such irrigating water and disarrange the schedule of such city and thereby deprive any user or landowner from the uninterrupted use and benefit of his turn of said water, and provide a penalty for such misdemeanor. [1967, ch. 429, § 365, p. 1249.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when none specified, § 18-113.

50-1811. Board of correction — Changes in assessment books. — At the time of the meeting specified in the notice required by section 50-1807[, Idaho Code], the mayor and council of such city are hereby constituted a board of correction and for that purpose shall meet and continue in session from day to day as long as may be necessary not to exceed three (3) days, exclusive of holidays and make such changes in the said assessment book as may be necessary to make it conform to the facts, and such assessments levied for the maintenance, operation, extension and enlargement of the works may be reviewed by the mayor and council of the city during said time upon the request of any person interested, and within five (5) days after the mayor and council, shall have adjourned as a board of correction, the city clerk shall complete the assessment books as the same may have been adjusted and/or corrected by the mayor and council sitting as a board of correction and shall certify to the same and deliver said books to the city treasurer who shall collect the assessments in the manner herein provided. [1967, ch. 429, § 366, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1812. Correction of irregularities upon giving notice — Omissions. — If the levy of any assessment or assessments for any year as provided by this section, upon any or all the lands, lots, pieces or parcels of real estate within the boundaries of such irrigation system, shall be discovered to be irregular and void because of any irregularity, informality or error in the assessment books or for any other reason, the said mayor and council of the city may meet and correct such errors upon five (5) days prior notice published in the official newspaper, as provided in sections 50-1801 through 50-1835[, Idaho Code,] and at such meeting correct any error or mistake that may have been found to exist which makes such assessment roll invalid, provided, that no invalidity of such assessment roll may be claimed on account of the omission of the name or the incorrect naming of the owner of any lots, pieces or parcels of real estate so assessed or the

omission of lands, lots, pieces or parcels of real estate through error or inadvertence from the assessment roll, but that such omitted lot, piece or parcel of land shall be assessed by the city clerk. [1967, ch. 429, § 367, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1813. Assessments as prior liens. — All assessments levied under this act shall be a first and prior lien, subject only to state and county taxes and assessments based on any irrigation bond issue outstanding at the time of the passage of section [sections] 50-1801 through 50-1835[, Idaho Code], against the property assessed from and after the first Monday of April of any year, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof, and any lots, pieces or parcels of real estate within the boundaries of such city irrigation system owned by a city or county and not used purely for governmental purposes shall be subject to such assessment. [1967, ch. 429, § 368, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

For meaning of "this act", see Compiler's Notes, § 50-102.

JUDICIAL DECISIONS

Lien Not Authorized.

This section does not permit cities to impose a lien upon the property of an owner based on delinquent charges for water, sewer

and garbage services furnished to the tenants. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

50-1814. Notice of time assessments become due — Apportionment of assessments. — Upon receipt of such assessment roll the treasurer of the city shall publish a notice in the official newspaper of such city that the said assessments shall be due and payable on or before the 1st day of April of each year, which said notice shall be published twice at intervals of not less than six (6) days. All assessments collected shall, by the city treasurer, be apportioned to the several funds in proportion to the several levies. No irrigation water shall be supplied to any lots, pieces or parcels of land within the boundaries of such irrigation system until such assessments shall have been paid in full. [1967, ch. 429, § 369, p. 1249.]

50-1815. Entry of delinquent assessments and penalties — Amounts of penalty and interest. — On or before the second Monday of July of each year in which the assessments are levied, the treasurer of the city shall enter all delinquent assessments and penalties on the assessment roll, which entry shall be considered to be dated as of the first day of July of each year, and shall have the force and effect of a sale to the city treasurer

of the city as grantee in trust for said city of all the lands, parcels, pieces or tracts of real estate entered upon such assessment roll upon which such assessments have not been paid before delinquency. The penalty required to be added on delinquent assessments shall be two per cent (2%) of the amount unpaid and the treasurer of such city shall collect such assessments which are delinquent with such penalty added, together with interest on the amount of such delinquent assessment at the rate of eight per cent (8%) per annum from the date of sale until redemption. [1967, ch. 429, § 370, p. 1249.]

50-1816. Certificate showing amount of collections and delinquencies. — On or before the third Monday of July of each year in which the assessments were [are] levied, the treasurer of the city shall make his certificate to the clerk of the city showing the amount of such assessments collected before delinquency and the amount of such assessments which have become delinquent. [1967, ch. 429, § 371, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler as the probable intended word.

50-1817. Compilation of alphabetical list of delinquencies. — On or before the fourth Monday of July of the year in which such assessments were [are] levied, the city treasurer shall compile a list of such delinquency entries, in cases where redemption has not been made, which list shall contain a description of the lots, lands, parcels and pieces of real estate covered by such delinquency entry and the name of the person or persons to whom they are assessed, together with the amount of such delinquent assessments with penalties, and shall number each entry on such list consecutively in the order such entry appears on the assessment roll and in case such list is not in alphabetical order he shall supplement such list with an alphabetical index. [1967, ch. 429, § 372, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed inserted was added by the compiler as the probable intended word.

50-1818. Certified copy of delinquency list filed — Fee. — On or before the fourth Monday of July of the year in which such assessments were [are] levied, the city treasurer shall file a certified copy of the delinquency list, as provided in the preceding section, with the county recorder of the county in which the lands covered by the various delinquent assessments are located which said list shall be kept with the records of said county recorder in a book to be furnished by such city designated "A Record of Delinquent Assessments of the City of" Upon receiving such

certified list the recorder shall enter the same on his receipt book and shall be entitled to a filing fee of \$2.00 therefor. [1967, ch. 429, § 373, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler as the probable intended word.

50-1819. Redemption of lands. — After delinquency and prior to three (3) years from the date of delinquency, redemption of the lands may be made by paying to the city treasurer an amount equal to the delinquent assessment thereon, plus the penalty of two per cent (2%) thereon, together with interest at the rate of eight per cent (8%) per annum from the date of delinquency entry until paid. Upon redemption the city treasurer shall note the redemption on the delinquency list and shall issue a redemption certificate in triplicate showing the lands redeemed, the year in which the assessment was made, the delinquency entry number, and deliver one (1) copy thereof to the redemptioner and in case the delinquency list including the land being redeemed has been filed with the county recorder he shall file one copy with the county recorder of the county in which the land is located and thereupon the county recorder shall enter the redemption opposite the recording entry in his records of delinquency assessments for which service the county recorder shall be entitled to a fee of 25¢, which fee shall be added to the amount necessary for redemption and paid by the redemptioner and transmitted to the county recorder by the city treasurer. [1967, ch. 429, § 374, p. 1249.]

50-1820. Unredeemed property deeded to city. — If the property is not redeemed within three (3) years from the date of delinquency entry, the treasurer must make to the city a deed to the property, but the city shall not be entitled to a tax deed for the lands, lots, parcels or pieces of real estate described in such delinquency entry until the following sections have been complied with. [1967, ch. 429, § 375, p. 1249.]

50-1821. Notice of pending tax deed. — The city treasurer shall publish a notice in the official newspaper of the city to the effect that he will take deed to all of the property upon the delinquency list for the year of delinquency (stating the year of delinquency) for which the city is entitled to take title to the property, but such notice need not give the names or the description of the property mentioned in the delinquency list. Said notice shall be inserted three (3) times at intervals of not less than one (1) week and the first insertion be not more than five (5) months and at the last insertion not less than three (3) months from the time of redemption period expired and the city treasurer shall thereupon, not less than three (3) months nor more than five (5) months before the expiration of the time of redemption, mail a notice of pending tax deed to the person or persons in whose name the land, lots, pieces or parcels of property stands in the recorder's office of the county in which said land, lot, piece or parcel of

property is situated at such owner's last known place of residence. Said notice shall state when the delinquency entry was made, in whose name the property was assessed, the description of the lands, lots or pieces of real estate for which such delinquency was made, for what year assessed and when the term of redemption will expire. Any mortgagee or holder of a recorded lien upon such real estate or any holder of a bond of any local improvement district within the city may file a request in the office of the city treasurer for a notice similar to the one provided for the person in whose name the title of the real estate stands which said request shall include the name and address of the mortgagee, recorded lienholder or bondholder, the name of the reputed owner of the land, piece or parcel of real estate, the description of the same, the date of the expiration of mortgage or other lien or the maturity of such bonds, and such notice need not be sent after the date of expiration unless a further request therefor be duly filed. If the said mortgagee, lienholder or bondholder shall furnish a duplicate form of request, the treasurer of the city shall certify thereon to the filing of the request and deliver or mail the same to the party filing it. A notation of all such requests shall be inserted in a book by the city treasurer provided for that purpose, and notation of the name of the person and the description of the property and the date of the expiration of the lien shall be inserted in appropriate columns. As a part of the affidavit hereinafter provided, the city treasurer shall insert a certificate of the mailing of such notice, provided, that personal service of any of the notices provided in this section may be had upon the record owner of the property, mortgagee, recorded lienholder or bondholder in lieu of mailing such notice. [1967, ch. 429, § 376, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted

50-1822. Affidavit of compliance by treasurer. — The city treasurer shall, before the city shall be entitled to a deed, make an affidavit of his having complied with the conditions thereof, stating particularly the facts relied on as constitute such compliance, which affidavit shall be delivered to the city clerk to be by such officer entered on the records of his office and preserved in the files of his office. The city treasurer shall also cause to be filed with the city clerk an affidavit by the publisher, owner or editor of the official newspaper of the city in which notice of time of taking deed was printed and published, which said printed notice and affidavit of publication shall be filed and preserved among the files of the city clerk. The affidavit of the city treasurer as herein provided and of the publisher, owner or editor of such official newspaper shall be prima facie evidence in all courts that such notice has been given and published as therein stated. Any person swearing falsely to such affidavit shall be deemed guilty of perjury and punished accordingly. [1967, ch. 429, § 377, p. 1249.]

STATUTORY NOTES

Cross References. — Perjury, § 18-5401 et seq.

50-1823. Tax deed — Form and contents — Title conveyed. — The matters recited in the delinquency entry must be recited in the deed to the city, and such deed duly acknowledged or proved shall be prima facie evidence in that: (1) the property was assessed as required by law; (2) that the property was equalized as required by law; (3) that the assessments were levied in accordance with law; (4) that the assessments were unpaid; (5) that at the proper time the delinquency entry was made as prescribed by law and by the proper officer; (6) that the property was unredeemed; (7) that the person who executed the deed was the proper officer of the city. Such deed duly acknowledged and proved shall be prima facie evidence of the regularity of all proceedings for the assessments up to and including the execution and delivery of the deed. The said deed shall convey to the grantee the absolute title to the lands described therein free and clear of all liens and encumbrances except mortgagees of record, holders of liens and bondholders to which notice has not been sent after request, as provided in this act, and except any liens for assessments which have attached subsequent to assessment resulting in the sale and except any lien for state and county taxes. [1967, ch. 429, § 378, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1824. Deed prima facie evidence of regularity. — Such deed duly acknowledged and proved is prima facie evidence of the regularity of all other proceedings from the assessment by the treasurer up to the execution of the deed. [1967, ch. 429, § 379, p. 1249.]

50-1825. Deed to city — Recitals and form. — Upon the expiration of the period of redemption the city treasurer shall execute to the city a deed to the property described in the delinquency entry; which deed shall recite that it was issued in consideration of the amount of taxes or assessments (specifying the amount) for the year (naming the year) to the city treasurer of the city for the property therein described. Such deed shall be duly acknowledged by the city treasurer and shall be prima facie evidence of full compliance by the city and of all of its officers of every act and thing required to be done as a condition to the issuance of said deed and of the full compliance with the law, prerequisite to the execution of a valid tax deed and that the property has not been redeemed. Any number of descriptions of land held by one (1) person, firm, or corporation within the boundaries of the municipal irrigation system may be included in one (1) deed to the city. [1967, ch. 429, § 380, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

50-1826. Sale of land by city. — All lots, pieces or parcels of land taken by the city under the provisions of this act may be sold by the city under the provisions of sections 50-1401 through 50-1409[, Idaho Code], as property not acquired or used as a public park, playground or public building site. [1967, ch. 429, § 381, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style. For words "this act", see Compiler's Notes, § 50-102.

50-1827. Payment of state and county taxes by city — Repayment upon redemption — Sale by county for taxes. — Such city may pay state and county taxes on any property where the assessments levied hereunder are delinquent and within the boundaries of the city irrigation system, and may purchase any or [of] such property from the county at tax sale and the amount of the taxes paid by the city or the purchase price at tax sale shall be added to and become a part of city's lien on the property and must be repaid upon payment of delinquent assessments or redemption from tax deed, and when so purchased may be sold by the city in the manner provided for selling property acquired by the city for nonpayment of assessments under this act. When any property has been sold by the county for state and county taxes, the city operating a city irrigation system under this chapter may cancel all or a part of the taxes and assessments levied by it under sections 50-1801 through 50-1835[, Idaho Code,] before such sale by the county and may issue or cause to be issued a redemption certificate or quit claim deed upon a proper resolution by the mayor and council without the necessity of advertising such property for sale. [1967, ch. 429, § 382, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler for clarity and to correct the statutory citation style. For words "this act", see Compiler's Notes, § 50-102.

50-1828. Disposal of funds from sales. — All moneys received from the sale of any lots, pieces or parcels of real estate under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] shall be paid into the city irrigation system fund by the treasurer of the city, and shall be apportioned to the various funds on the same basis as levies upon which the sale was made. [1967, ch. 429, § 383, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-1829. Action to quiet title against or test validity of assessment — Tender. — Any suit, action or proceeding which may be commenced for the purpose of determining the validity of the sale of land for assessments, as in this act provided, to quiet title against the same or to remove the cloud thereof or to recover possession from the purchaser in possession of the lands so sold or its or his successor or assign, whether bought by the original owner or his successor in interest, shall be commenced within two (2) years from the date of the expiration of the period of redemption allowed by this act and not otherwise. In every action, suit or proceeding brought for such purposes, whether before or after the issuance of tax deed, the person claiming to be the owner, as against the person claiming under said tax deed, shall tender in the action, suit or proceeding and pay into the court at the time of filing the same amount of the purchase price for which the lands were sold together with all taxes and assessments which have been paid by the purchaser of said land after tax sale together with interest thereon at the rate of eight per cent (8%), per annum from the respective time of payment of such sum or sums up to the time of filing such pleading in the action, suit or proceeding. Said sum or such portion thereof as the courts shall find to be just shall be paid by the purchaser, his heirs or assigns, in case the right of title to the purchaser shall fail in such suit, action or proceeding. [1967, ch. 429, § 384, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1830. Assessment of city irrigation systems by irrigation district. — Should any city acquire and operate a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code], which shall be included within the boundaries of one or more irrigation districts, nothing in sections 50-1801 through 50-1835[, Idaho Code,] shall be construed to prevent such irrigation district or irrigation districts from assessing the lands within the boundaries of the city irrigation system for the payment of its just portion of such bonded or other outstanding indebtedness until such bonded or other outstanding indebtedness together with the interest accruing thereon shall have been fully paid and discharged. [1967, ch. 429, § 385, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-1831. Adjustment and settlement of accounts with irrigation system in operation. — Any city operating an irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] which desires to acquire and operate or acquire or operate a city irrigation system as provided under sections 50-1801 through 50-1835[, Idaho Code,] shall cause the accounts between themselves and any irrigation or canal company or irrigation district, as the case may be, to be adjusted and settled at the time such city shall commence to operate a city irrigation system under the provisions of this act. [1967, ch. 429, § 386, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style. For words "this act", see Compiler's Notes, § 50-102.

50-1832. Ordinances or resolutions establishing boundaries. — Any city desiring to acquire and operate or acquire or operate a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] for any part or all of such city shall pass and publish an ordinance describing the exterior boundaries of such irrigation system. Thereafter the boundary of such irrigation system may, from time to time, be contracted, extended or enlarged by ordinance of such city; a copy of such ordinance duly certified to be correct by the city clerk shall be recorded in the office of the recorder of the county wherein such city is situated. [1967, ch. 429, § 387, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style. *

50-1833. Diversion works for city irrigation system. — Any city desiring to operate or operating a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] may contract for the delivery of irrigation water for all or any portion of the city irrigation system and pay therefor on an equalized basis, and may hold such interest as may be necessary and proper in diversion works, canals or ditches jointly with any corporation or irrigation district for the purpose of conveying water to the city irrigation system, either wholly within or partly within and partly without or wholly without the city limits in order to carry such water from its point of diversion to the boundaries of the city irrigation system; and for the purpose may acquire and hold stock in the name of the mayor of a city, in trust for the water users of such city irrigation system, in any private water corporation to the extent necessary to supply water for the city irrigation system, and such stock shall be deemed to be held in trust by the city for the use and benefit of water users of said city irrigation system. The mayor or the chairman of the council of any city in the absence of the mayor may vote at any annual meeting of such corporation on behalf of the city and

may be elected on the board of trustees of any such water or irrigation company, the same as though he personally was a stockholder and as such entitled to be on such board of trustees. [1967, ch. 429, § 388, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion near the beginning of the section was added by the compiler to correct the statutory citation style.

50-1834. Manner of acquiring or establishing city irrigation system — Power of cities. — Cities within this state are hereby authorized to adopt and use any one or all of the methods in this act provided for acquiring or establishing a city irrigation system, and cities and irrigation districts and corporations of this state are by sections 50-1801 through 50-1835[, Idaho Code,] authorized to make, execute and deliver any and all contracts, indentures, deeds and instruments necessary and proper to put sections 50-1801 through 50-1835[, Idaho Code,] into effect and to carry out the provisions hereof and to do any and all things necessary to put into effect and carry out the provisions of sections 50-1801 through 50-1835[, Idaho Code]. [1967, ch. 429, § 389, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style. For words "this act", see Compiler's Notes, § 50-102.

50-1835. Separability. — Should any section, phrase, provision or portion of sections 50-1801 through 50-1835[, Idaho Code,] be held to be unconstitutional or illegal, the same shall not in any manner affect the remainder of sections 50-1801 through 50-1835[, Idaho Code]. [1967, ch. 429, § 390, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

CHAPTER 19

HOUSING AUTHORITIES AND COOPERATION LAW

SECTION.

- 50-1901. Short title.
- 50-1902. Finding and declaration of necessity.
- 50-1903. Definitions.
- 50-1904. Powers of authority.
- 50-1905. Creation of housing authorities.
- 50-1906. Termination of housing authority.
- 50-1907. Cooperation in undertaking housing projects.
- 50-1908. Tax exemptions and payments in lieu of taxes.

SECTION.

- 50-1909. Donations to housing authority.
- 50-1910. Appointment, qualifications and tenure of commissioners.
- 50-1911. Removal of commissioners.
- 50-1912. Operation not for profit.
- 50-1913. Rentals and tenant selection.
- 50-1914. Eminent domain.
- 50-1915. Planning, zoning and building laws.
- 50-1916. Bonds.
- 50-1917. Form and sale of bonds.

SECTION.

- 50-1918. Provisions of bonds and trust indentures.
 50-1919. Certificate of attorney general.
 50-1920. Remedies of an obligee of authority.
 50-1921. Filing of minutes of meetings and reports.
 50-1922. Exemption of property from execution sale.

SECTION.

- 50-1923. Aid from federal government.
 50-1924. Construction of powers conferred.
 50-1925. Additional remedies conferrable by authority.
 50-1926. Separability.
 50-1927. Act controlling.

50-1901. Short title. — The provisions of sections 50-1901 through 50-1927[, Idaho Code,] may be referred to as the "Housing Authorities and Cooperation Law." [1967, ch. 429, § 391, p. 1249.]

STATUTORY NOTES

Cross References. — County housing authorities and cooperation law, § 31-4201 et seq.

Idaho Housing and Finance Association, § 67-6201 et seq.

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutionality.

Former Housing Authorities Law was not void as conflicting with Const., art. 8, § 3.

Lloyd v. Twin Falls Hous. Auth., 62 Idaho 592, 113 P.2d 1102 (1941).

50-1902. Finding and declaration of necessity. — It is hereby declared: (a) That there exist in this state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(b) That these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise;

(c) That the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are

public uses and purposes for which public money may be spent and private property acquired and are governmental functions. [1967, ch. 429, § 392, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

50-1903. Definitions. — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" shall mean any of the public corporations created by section 50-1905, Idaho Code.

(b) "Housing project" shall mean any work or undertaking: (1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (3) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; to buildings, and the land, equipment, facilities and other real or personal property, which do not contain dwelling units or other living accommodations for persons of low income when such buildings are utilized for administrative, community, health, recreational, welfare or other purposes by or for low-income persons or senior citizens, and redevelopment projects carried out by an authority at the request of local government when such projects include dwelling units which are sold or rented to persons of low income.

(c) "Governing body" shall mean the city council, board of commissioners, board of trustees or other body having charge of the fiscal affairs of the state public body.

(d) "Federal government" shall include the United States of America, the United States department of housing and urban development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "City" shall mean any city in the state of Idaho, including each city having a special charter. "The city" shall include those having a special charter and shall mean the particular city for which a particular housing authority is created.

(f) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(g) "Area of operation" shall include the city and the area within five (5) miles of the territorial boundaries thereof; provided, however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined. Provided however, that a county housing authority may continue to own and operate any housing project for which it has become financially obligated which is located in a city that subsequently creates a housing authority or in an area annexed by a city that has or subsequently creates a housing authority.

(h) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(i) "Person of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

(j) "Bonds" shall mean any bonds, notes, interim certificates, debentures or other obligations issued by an authority pursuant to this chapter.

(k) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(l) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessors demising, to the authority, property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority. [1967, ch. 429, § 393, p. 1249; am. 1993, ch. 215, § 1, p. 581; am. 2001, ch. 260, § 7, p. 935.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 2001, ch. 260 declared an emergency. Approved on March 28, 2001.

50-1904. Powers of authority. — A housing authority shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority, including the power to contract with other housing authorities for services; and to make and from time to time amend and repeal bylaws, rules

and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

(b) Within the area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this act or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this act, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance; to rent or sell and to agree to rent or sell dwellings forming part of the housing projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which banks may legally invest funds, subject to the control of the housing authority; to purchase its own bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to

cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one (1) or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof, under oath, at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available, to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation), its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(i) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing or refinancing of land, buildings or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(j) Any housing project shall be subject to the requirement that the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent (30%) of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent (50%) of the total number of units in the development or at least fifty percent (50%) of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent (50%) of the total number of mobile home lots in the park.

(k) To exercise all or any part or combination of powers herein granted. [1967, ch. 429, § 394, p. 1249; am. 1993, ch. 215, § 2, p. 581; am. 1998, ch. 367, § 6, p. 1146.]

STATUTORY NOTES

Compiler's Notes. — For meaning of "this act", see Compiler's Notes, § 50-102.

The words enclosed in parentheses so appeared in the law as enacted.

50-1905. Creation of housing authorities. — In any city of the state of Idaho, there may be created an independent public body corporate and politic to be known as a housing authority, which shall not be an agency of

the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city, by proper resolution, shall declare, at any time hereafter, that there is need for an authority to function in such city. The determination, as to whether or not there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the city, asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income or rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary, said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities and the extent to which conditions exist in such building which endanger life or property by fire or other causes.

Nothing in this act shall prevent governing bodies from jointly creating by resolution an independent public body corporate and politic to carry out and effectuate the purposes and provisions of this act and to serve the best interests of their respective citizenry.

In any suit, action or proceeding, involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms, no further detail being necessary, that either or both of the above enumerated conditions exist in the city. A copy of such resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action or proceeding. [1967, ch. 429, § 395, p. 1249; am. 1998, ch. 367, § 7, p. 1146.]

STATUTORY NOTES

Compiler's Notes. — The term "this act", 31-4210, 31-4211, 31-4221, 50-1904, 50-1905, in the third paragraph, refers to S.L. 1996, ch. 50-1910, 50-1911, and 50-1921. 367, which is codified as §§ 31-4204, 31-4205,

50-1906. Termination of housing authority. — The authority shall terminate at such time as the council of the city, by proper resolution, shall declare that there is no longer a need for a housing authority to function within such city. The determination that there is no longer a need for such authority to function (a) may be made by the governing body on its own motion or (b) may be made by the governing body upon motion of the duly

appointed and acting commissioners of the authority that they no longer have any need to function within said city.

The council of such city shall, however, before adopting a resolution terminating such authority, determine, by audit if necessary, the financial condition of said authority, and if there is any outstanding liability due and owing by said authority, the city shall provide the necessary funds for satisfaction thereof; if, however, funds are found, over and above such liabilities the city shall provide for the satisfaction of said liabilities and the balance of the funds shall be accepted by the city and the authority shall be released from their responsibility therefor.

Any funds so received by such city, as a result of the termination of the authority, shall be dedicated to the extension, maintenance and promotion of the public parks system of said city for the benefit and welfare of the city. [1967, ch. 429, § 396, p. 1249.]

50-1907. Cooperation in undertaking housing projects. — For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine: (a) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein, to a housing authority or the federal government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such state public body;

(e) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing or [of] unsafe, insanitary or unfit dwellings;

(g) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(h) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this act;

(i) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this section;

(j) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in

a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. [1967, ch. 429, § 397, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word “of” in subdivision (f) was inserted by the compiler as the probable intended word. For words “this act”, see Compiler's Notes, § 50-102.

50-1908. Tax exemptions and payments in lieu of taxes. — The property of an authority is declared to be public property used for essential public purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof; provided, however, that in lieu of such taxes, an authority may agree to make payments to the city for improvements, services and facilities furnished by such city for the benefit of a housing project, or in lieu of such taxes, an authority may agree to make payments to a school district or school districts, which district or districts include within its boundaries all or a portion of the real property of an authority, for school services and facilities furnished by said school district or districts, for the benefit of the residents of a housing project. [1967, ch. 429, § 398, p. 1249.]

50-1909. Donations to housing authority. — Any city or county, in which a housing authority has been created, shall have the power, from time to time, to lend or donate money to such authority or to agree to take such action; provided, however, that when a housing authority has the money available therefore it shall make reimbursement for all such loans made of it. [1967, ch. 429, § 399, p. 1249; am. 1993, ch. 215, § 3, p. 581.]

50-1910. Appointment, qualifications and tenure of commissioners. — When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint, with the approval of the city council, five (5) or seven (7) persons as commissioners of the authority created for said city. Commissioners of the authority shall serve five (5) year terms. If the mayor appoints, with the approval of the city council, five (5) persons as commissioners of the authority, the commissioners, who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, except that all vacancies shall be filled for the unexpired term. If the mayor appoints, with the approval of the city council, seven (7) persons as commissioners of the authority, the commissioners who are first appointed shall be designated to serve terms as follows: one (1) commissioner for a one (1) year term, two (2) commissioners for two (2) year terms, two (2) commissioners for three (3) year terms, one (1) commissioner for a four (4) year term and one (1) commissioner for a five (5) year term, except that all

vacancies shall be filled for the unexpired term. Upon resolution by a governing body of a city, after an authority has been created with either five (5) or seven (7) commissioners, the number of commissioners may be increased from five (5) to seven (7) or reduced from seven (7) to five (5). No commissioner of any authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and been qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The service of a housing assistance recipient appointed as a commissioner pursuant to 42 U.S.C. section 1437(b) shall be contingent upon his continued receipt of housing assistance. A commissioner shall receive no compensation for his services for the authority in any capacity, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners. A majority of the appointed commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The bylaws of the authority shall designate which of the commissioners appointed shall be the first chairman and such chairman shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman of the authority thereafter becomes vacant, the commissioners shall select a chairman from their number, a vice chairman, and may employ a secretary, an executive director who shall serve as an at-will employee of the commissioners, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the city attorney of the city or may employ its own counsel and legal staff. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper. [1967, ch. 429, § 400, p. 1249; am. 1998, ch. 367, § 8, p. 1146; am. 2001, ch. 257, § 2, p. 923.]

50-1911. Removal of commissioners. — A commissioner of an authority may be removed by the mayor, with the approval of the city council, at any time, with or without cause. The mayor shall cause to be sent a notice of the removal to the commissioner removed, the authority and the city clerk. [1967, ch. 429, § 401, p. 1249; am. 1998, ch. 367, § 9, p. 1146.]

50-1912. Operation not for profit. — It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing adequate, safe and sanitary accommodations, and no housing authority shall construct or operate any such project for profit or as a source of revenue to the city. An authority shall fix the rentals for dwellings in its

projects at no higher rates than it shall find to be necessary in order to produce revenue which, together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived, will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and (c) to create, during not less than the six (6) years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one (1) year thereafter and to maintain such reserve. [1967, ch. 429, § 402, p. 1249.]

50-1913. Rentals and tenant selection. — In the operation or management of housing projects, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) it may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;

(b) it may rent or lease dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding; and

(c) it shall not accept any person as a tenant in any housing project, if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five (5) times, the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three (3) or more minor dependents, such ratio shall not exceed six (6) to one (1). In computing the rental for the purpose of selecting tenants, there shall be included in the rental the average annual cost, as determined by the authority, to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this or the preceding section shall be construed as limiting the power of authority to vest, in an obligee, the right, in the event of a default by the authority, to take possession, during the period of such default, of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section. [1967, ch. 429, § 403, p. 1249.]

RESEARCH REFERENCES

A.L.R. — Validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 A.L.R.4th 922.

50-1914. Eminent domain. — An authority shall have the right to acquire, by the exercise of the power of eminent domain, any real property which it may deem necessary for its purposes under this act after the adoption of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise

the power of eminent domain in the manner provided in title 7, chapter 7, Idaho Code, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the state or any political subdivision thereof may be acquired without its consent. [1967, ch. 429, § 404, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1915. Planning, zoning and building laws. — All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions. [1967, ch. 429, § 405, p. 1249.]

50-1916. Bonds. — An authority shall have power to issue bonds, from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of sections 50-1901 through 50-1927, Idaho Code, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable: (a) exclusively from the income and revenue of a housing project financed with the proceeds of such bonds, or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project, or (c) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice thereof.

Neither the commissioners of any authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority shall state on their face that they shall not be a debt of the city, the county, the state nor any political subdivision thereof and neither the city, the county, the state nor any political subdivision thereof shall be liable thereon, nor in any event

shall such bonds or obligations be payable out of any funds other than those of said authority. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. [1967, ch. 429, § 406, p. 1249; am. 1993, ch. 215, § 4, p. 581.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Liability on Bonds.

Liability on bonds issued by a housing authority was strictly limited. The principal and interest of such bonds were payable exclusively from the income and revenue of the housing project financed with the proceeds thereof, or exclusively from such income and revenue, together with grants from the fed-

eral government, and neither the city, the county, the state nor any political subdivision thereof was liable and the bonds were not payable from any funds other than those of the housing authority. *Lloyd v. Twin Falls Hous. Auth.*, 62 Idaho 592, 113 P.2d 1102 (1941).

50-1917. Form and sale of bonds. — Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at a rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium as such resolution, its trust indenture, or the bonds so issued, may provide.

The bonds may be sold at public or private sale at not less than par.

In case any of the commissioners or officers of the authority, whose signatures appear on any bonds or coupons, shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action or proceedings, involving the validity or enforceability of any bond of an authority or the security thereof, any such bond, reciting, in substance, that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income, shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with purposes and provisions of this act. [1967, ch. 429, § 407, p. 1249; am. 1970, ch. 133, § 16, p. 309.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1918. Provisions of bonds and trust indentures. — In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost[,] destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for the redemption and to provide the terms and conditions thereof.

(e) To covenant, subject to the limitations contained in this act, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest, in a trustee or trustees or the holders of bonds or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession of any housing project or part thereof, and, so long as said authority shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority

with said trustee, to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein. [1967, ch. 429, § 408, p. 1249; am. 1993, ch. 215, § 5, p. 581.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma, in subdivision (d), so appeared in the law as amended by S.L. 1993, ch. 215, § 5. For words "this act", see Compiler's Notes, § 50-102.

50-1919. Certificate of attorney general. — Every housing authority shall submit, to the attorney general of the state, any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this act and are otherwise regular in form, and if such bonds, when delivered and paid for, will constitute binding and legal obligations of such authority, enforceable according to the terms thereof, the attorney general shall certify, in substance, upon the back of each of said bonds that it is issued in accordance with the constitution and laws of the state of Idaho. [1967, ch. 429, § 409, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1920. Remedies of an obligee of authority. — An obligee of an authority shall have the right, in addition to all other rights, which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceedings at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority, with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this act.

(b) By suit, action or proceeding in equity, to enjoin any acts which may be unlawful, or the violation of any of the rights of such obligee of said authority. [1967, ch. 429, § 410, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1921. Filing of minutes of meetings and reports. — (1) An authority shall file a copy of the minutes of all meetings with the city clerk within ten (10) days after their approval by the authority.

(2) At least once a year, an authority shall file a report with the city clerk of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

(3) An authority shall file with the clerk a copy of the authority's financial reports, any claims and causes of action against the authority, the authority's employee policy handbooks and any changes, modifications, or deletions to the handbooks. [1967, ch. 429, § 411, p. 1249; am. 1998, ch. 367, § 10, p. 1146.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-1922. Exemption of property from execution sale. — All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues. [1967, ch. 429, § 412, p. 1249.]

50-1923. Aid from federal government. — In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking[,] construction, maintenance or operation of any housing project by such authority. [1967, ch. 429, § 413, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma in the last sentence was inserted by the compiler for clarity. For words "this act", see Compiler's Notes, § 50-102.

50-1924. Construction of powers conferred. — Nothing in this act or any other law shall be construed as authorizing a housing authority to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the city, the county, the state or any subdivision thereof. [1967, ch. 429, § 414, p. 1249; am. 1993, ch. 215, § 6, p. 581.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", ch. 215 declared an emergency. Approved see Compiler's Notes, § 50-102. March 26, 1993.

Effective Dates. — Section 7 of S.L. 1993,

50-1925. Additional remedies conferrable by authority. — A housing authority shall have power, by its resolution, trust indenture, lease or contract, to confer upon any obligee holding or representing a specified amount in bonds or holding a lease the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as said authority shall continue in default;

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long as said authority shall continue to be in default operate and maintain the same and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. [1967, ch. 429, § 415, p. 1249.]

50-1926. Separability. — Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of sections 50-1901 through 50-1927[, Idaho Code], or the application thereof to any person or circumstance, is held invalid, the remainder [of] sections 50-1901 through 50-1927[, Idaho Code,] and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [1967, ch. 429, § 416, p. 1249.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed insertions were added by the compiler for clarity and to correct the statutory citation style.

50-1927. Act controlling. — Insofar as the provisions of sections 50-1901 through 50-1927[, Idaho Code,] are inconsistent with the provisions of any other law, the provisions of sections 50-1901 through 50-1927[, Idaho Code,] shall be controlling. [1967, ch. 429, § 417, p. 1249.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

CHAPTER 20

URBAN RENEWAL LAW

- SECTION.
- 50-2001. Short title.
 - 50-2002. Findings and declarations of necessity.
 - 50-2003. Encouragement of private enterprise.
 - 50-2004. Workable program.
 - 50-2005. Finding of necessity by local governing body.
 - 50-2006. Urban renewal agency.
 - 50-2007. Powers.
 - 50-2008. Preparation and approval of plan for urban renewal project.
 - 50-2009. Neighborhood and community-wide plans.
 - 50-2010. Acquisition of property.
 - 50-2011. Disposal of property in urban renewal area.

- SECTION.
- 50-2012. Issuance of bonds.
 - 50-2013. Bonds as legal investments.
 - 50-2014. Property exempt from taxes and from levy and sale by virtue of an execution.
 - 50-2015. Cooperation by public bodies.
 - 50-2016. Title of purchaser.
 - 50-2017. Interested public officials, commissioners or employees.
 - 50-2018. Definitions.
 - 50-2019 — 50-2026. [Repealed.]
 - 50-2027. Limitations on review of adoption or modification of plan, and issuance of bonds.
 - 50-2028 — 50-2030. [Repealed.]
 - 50-2031. Severability.
 - 50-2032. Severability.

50-2001. Short title. — This act shall be known and may be cited as the “Idaho Urban Renewal Law of 1965”. [1965, ch. 246, § 1, p. 600.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1965, ch. 246 compiled as §§ 50-2001 to 50-2018.

JUDICIAL DECISIONS

ANALYSIS

Limitations on county and municipal indebtedness.
Public use.

Limitations on County and Municipal Indebtedness.
Article VIII, § 3 of the Idaho Constitution is not applicable to the Boise redevelopment

agency, created pursuant to the Idaho urban renewal law as the alter ego of the city of Boise, even though the city participates in the agency’s creation and in the selection and

removal of its commissioners, since the agency is an entity of legislative creation, its powers and duties were established by the legislature, and its powers and operations are not controlled by the city. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Since the Boise redevelopment agency has no powers of taxation and no power to encumber any of the resources of the city of Boise, the provisions of Art. VIII, § 3 of the Idaho Constitution are not applicable to the agency. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The Boise redevelopment agency is not a subdivision of the state within the meaning of § 3 or § 4 of Art. 8 of the Idaho Constitution. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Public Use.

Inclusion of certain buildings which were not deteriorated in urban renewal plan area

does not authorize a taking for other than a public purpose where a predominance of the structures and other improvements are deteriorating and defective. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§ 50-2001 et seq.) constituted a public use as required by the Idaho Constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Cited in: *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

50-2002. Findings and declarations of necessity. — It is hereby found and declared that there exist in municipalities of the state deteriorated and deteriorating areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of these conditions is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenue because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that salvageable areas can be conserved and rehabilitated through appropriate public action as herein authorized, and the cooperation and voluntary action of the owners and tenants of property in such areas.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended as

herein provided and the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [1965, ch. 246, § 2, p. 600.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words “this act”, see Compiler's Notes, § 50-2001.

JUDICIAL DECISIONS

Relocation Costs.
The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as

the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

Cited in: *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

50-2003. Encouragement of private enterprise. — An urban renewal agency, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall also give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans, community-wide plans or programs for urban renewal, and general neighborhood renewal plans (consistent with the general plan of the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and the provision of necessary public improvements. [1965, ch. 246, § 3, p. 600.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words “this act”, see Compiler's Notes, § 50-2001.

50-2004. Workable program. — A municipality for the purposes of this act may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, or to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for: the prevention of the spread of blight into areas of the municipality which are free from blight through diligent

enforcement of housing, zoning and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and to cooperate with an urban renewal agency for the clearance and redevelopment of deteriorated or deteriorating areas or portions thereof. [1965, ch. 246, § 4, p. 600.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 50-2001.

50-2005. Finding of necessity by local governing body. — No urban renewal agency and no municipality shall exercise the authority hereafter conferred by this act until after the local governing body shall have adopted a resolution finding that: (1) one or more deteriorated or deteriorating areas as defined in this act exist in such municipality; (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality; and (3) there is need for an urban renewal agency to function in the municipality. [1965, ch. 246, § 5, p. 600.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 50-2001.

JUDICIAL DECISIONS

Construction.

The authority granted to a local governing body under this section to make findings does not constitute an unlawful delegation of legislative power because only a fact finding status exists in the local governing body and

there are sufficient and adequate standards contained in this section especially when read in combination with § 50-2018. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

50-2006. Urban renewal agency. — (a) There is hereby created in each municipality an independent public body corporate and politic to be known as the “urban renewal agency” for the municipality; provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the findings prescribed in section 50-2005, Idaho Code.

(b) Upon the local governing body making such findings, the urban renewal agency is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be appointed or designated as follows:

(1) The mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall

designate the number of commissioners to be appointed, and the term of each, provided that the original term of office of no more than two (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearings and have had an opportunity to be heard in person or by counsel.

(2) By enactment of an ordinance, the local governing body may appoint and designate itself to be the board of commissioners of the urban renewal agency, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the local governing body, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(3) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number.

The mayor may appoint a chairman, a cochairman, or a vice chairman for a term of office of one (1) year from among the commissioners, thereafter the commissioners shall elect the chairman, cochairman or vice chairman for a term of one (1) year from among their members. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31 of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities,

income and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk or county recorder and in the office of the agency.

(d) An urban renewal agency shall have the same fiscal year as a municipality and shall be subject to the same audit requirements as a municipality. An urban renewal agency shall be required to prepare and file with its local governing body an annual financial report and shall prepare, approve and adopt an annual budget for filing with the local governing body, for informational purposes. A budget means an annual estimate of revenues and expenses for the following fiscal year of the agency.

(e) An urban renewal agency shall comply with the public records law pursuant to chapter 3, title 9, Idaho Code, open meetings law pursuant to chapter 23, title 67, Idaho Code, the ethics in government law pursuant to chapter 7, title 59, Idaho Code, and the competitive bidding provisions of chapter 28, title 67, Idaho Code. [1965, ch. 246, § 6, p. 600; am. 1976, ch. 256, § 1, p. 871; am. 1986, ch. 9, § 1, p. 49; am. 1987, ch. 276, § 1, p. 568; am. 2002, ch. 143, § 1, p. 394; am. 2005, ch. 213, § 21, p. 637.]

STATUTORY NOTES

Cross References. — Urban renewal law of 1965, § 50-2001 et seq.

JUDICIAL DECISIONS

ANALYSIS

Limitations on county and municipal indebtedness.
Relocation costs.

Limitations on County and Municipal Indebtedness.

Article VIII, § 3 of the Idaho Constitution is not applicable to the Boise redevelopment agency, created pursuant to the Idaho urban renewal law as the alter ego of the city of Boise, even though the city participates in the agency's creation and in the selection and removal of its commissioners, since the agency is an entity of legislative creation, its powers and duties were established by the legislature, and its powers and operations are not controlled by the city. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Relocation Costs.

The rule at common law that utilities must relocate at their own expense is not an abso-

lute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

Cited in: *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

50-2007. Powers. — Every urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and

provisions of this act, including the following powers in addition to others herein granted:

(a) to undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act; and to disseminate slum clearance and urban renewal information;

(b) to provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, off-street parking facilities, public facilities, other buildings or public improvements; and any improvements necessary or incidental to a redevelopment project; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(c) within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain, upon sufficient cause and after a hearing on the matter, an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, renovate, rehabilitate, clear or prepare for redevelopment any such property or buildings; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this act: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project and related activities, unless the legislature shall specifically so state;

(d) with the approval of the local governing body, (1) prior to approval of an urban renewal plan, or approval of any modifications of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses; and (2) to assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection in the event that the real property is not made part of the urban renewal project;

(e) to invest any urban renewal funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 50-2012, Idaho Code, at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(f) to borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(g) within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but are not limited to: (1) plans for carrying out a program of voluntary compulsory repair and rehabilitation of buildings and improvements, (2) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (3) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(h) to prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced from an urban renewal area, and notwithstanding any statute of this state to make relocation payments to or with respect to such persons for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(i) to exercise all or any part or combination of powers herein granted;

(j) in addition to its powers under subsection (b) of this section, an agency may construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings and to be used for residential, commercial, industrial, and other uses contemplated by the urban renewal plan, and to provide utilities to the development site; and

(k) to lend or invest funds obtained from the federal government for the purposes of this act if allowable under federal laws or regulations. [1965, ch. 246, § 7, p. 600; am. 1972, ch. 156, § 1, p. 344; am. 1987, ch. 259, § 1, p. 536.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-2001.

JUDICIAL DECISIONS

Relocation Costs.

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as

the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

Cited in: *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

50-2008. Preparation and approval of plan for urban renewal project. — (a) An urban renewal project for an urban renewal area shall not be planned or initiated unless the local governing body has, by resolution, determined such area to be a deteriorated area or a deteriorating area or a combination thereof and designated such area as appropriate for an urban renewal project.

(b) An urban renewal agency may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to an urban renewal agency. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty (30) days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said 30 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal project, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project and the plan therefor if it finds that (1) a feasible

method exists for the location of families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families; (2) the urban renewal plan conforms to the general plan of the municipality as a whole; (3) the urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety and welfare of children residing in the general vicinity of the site covered by the plan; and (4) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise: Provided, that if the urban renewal area consists of an area of open land to be acquired by the urban renewal agency, such area shall not be so acquired unless (1) if it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality, or (2) if it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this act, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time: Provided that if modified after the lease or sale by the urban renewal agency of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the urban renewal agency may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by the local governing body of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the urban renewal agency may then cause such plan or modification to be carried out in accordance with its terms.

(g) Notwithstanding any other provisions of this act, where the local governing body certifies that an area is in need of redevelopment or

rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection (d) of this section and the provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project. [1965, ch. 246, § 8, p. 600.]

STATUTORY NOTES

Federal References. — Public Law 875, Eighty-first Congress, referred to in subsection (g), was repealed by Act Dec. 31, 1970, P.L. 91-606, effective December 31, 1970. See now, 42 USCS § 5121 et seq.

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-2001.

50-2009. Neighborhood and community-wide plans. — (a) An urban renewal agency or any public body authorized to perform planning work may prepare a general neighborhood renewal plan for urban renewal areas which may be of such scope that urban renewal activities may have to be carried out in stages over an estimated period of up to ten (10) years. Such plan may include, but is not limited to, a preliminary plan which (1) outlines the urban renewal activities proposed for the area involved, (2) provides a framework for the preparation of urban renewal plans, and (3) indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment. A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole and the workable program of the municipality.

(b) A municipality or any public body authorized to perform planning work may prepare or complete a community-wide plan or program for urban renewal which shall conform to the general plan for the development of the municipality as a whole and may include, but is not limited to, identification of slum, blighted, deteriorated or deteriorating areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of urban renewal activities.

(c) Authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. [1965, ch. 246, § 9, p. 600.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

50-2010. Acquisition of property. — (a) An urban renewal agency shall have the right to acquire by negotiation or condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project and related activities under this act. An urban renewal agency may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the United States, the state, or any political subdivision of the state, may be acquired without its consent.

(b) In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

- (1) any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, insanitary or otherwise contrary to the public health, safety, or welfare;
- (2) the effect on the value of such property, of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

(c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made or issued any judgment, decree, determination or order for the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition or operation. [1965, ch. 246, § 10, p. 600.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-2001.

50-2011. Disposal of property in urban renewal area. — (a) An urban renewal agency may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial, educational or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, condi-

tions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this act: Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the urban renewal agency may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan except property disposed of by it to the community or any other public body which property must be disposed of pursuant to the provisions of subsection (f) of section 50-2015, Idaho Code, even though such fair value may be less than the cost of acquiring and preparing the property for redevelopment. In determining the fair value of real property for uses in accordance with the urban renewal plan, an urban renewal agency shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the urban renewal agency retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The urban renewal agency in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property without the prior written consent of the urban renewal agency until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by an urban renewal agency which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part or parts of such contract or plan as the urban renewal agency may determine) may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b) An urban renewal agency may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. An urban renewal agency may, by public notice by publication in a newspaper having a general circulation in the community (thirty (30) days prior to the execution of any contract to sell, lease or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section) invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or

portion thereof, and shall state that proposals shall be made by those interested within thirty (30) days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The urban renewal agency shall consider all such redevelopment of [or] rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease or other transfer of any real property acquired by the agency in the urban renewal area. The urban renewal agency may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this act. The agency may execute such contract in accordance with the provisions of subsection (a) and deliver deeds, leases and other instruments and take all steps necessary to effectuate such contract.

(c) An urban renewal agency may temporarily operate and maintain real property acquired by it in an urban renewal area for or in connection with an urban renewal project pending the disposition of the property as authorized in this act, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(d) Any real property acquired pursuant to section 50-2007(d)[, Idaho Code,] may be disposed of without regard to other provisions of this section if the local governing body has consented to the disposal.

(e) Notwithstanding any other provisions of this act, and notwithstanding subsection (b) of this section, land in an urban renewal project area designated under the urban renewal plan for industrial or commercial uses may be disposed of to any public body or nonprofit corporation for subsequent disposition as promptly as practicable by the public body or corporation for redevelopment in accordance with the urban renewal plan, and only the purchaser from or lessee of the public body or corporation, and their assignees, shall be required to assume the obligation of beginning the building of improvements within a reasonable time. Any disposition of land to a nonprofit corporation under this subsection shall be made at its fair value for uses in accordance with the urban renewal plan. Any disposition of land to a public body under this subsection shall be made pursuant to the provisions of subsection (f) of section 50-2015, Idaho Code.

(f) Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation published in the community listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition. [1965, ch. 246, § 11, p. 600; am. 1985, ch. 183, § 1, p. 467; am. 1987, ch. 259, § 2, p. 536.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler for clarity and to correct the statutory citation style. The words enclosed in parentheses so ap-

peared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-2001.

Effective Dates. — Section 2 of S.L. 1985, ch. 183 declared an emergency. Approved March 22, 1985.

50-2012. Issuance of bonds. — (a) An urban renewal agency shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the urban renewal agency derived from or held in connection with its undertaking and carrying out of urban renewal projects under this act: Provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any urban renewal projects under this act, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the urban renewal agency.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds and other obligations of an urban renewal agency (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the state or any political subdivision thereof, and neither the municipality, the state nor any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of said urban renewal agency. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the urban renewal agency and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time, or times, bear interest at a rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of repayment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than par at public or private sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the agency may determine or may be exchanged for other

bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount on such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the agency of not to exceed the interest cost to the agency of the portion of the bonds sold to the federal government.

(e) In case any of the officials of the urban renewal agency whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the agency in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this act. [1965, ch. 246, § 12, p. 600; am. 1970, ch. 133, § 17, p. 309; am. 1972, ch. 156, § 2, p. 344.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-2001.

JUDICIAL DECISIONS

Mandamus Relief.

Where an agency petitioned for a writ of mandamus to require agency officials to sign a resolution for the issuance of certain bonds and to proceed to publish notice and execute the bonds, since the agency had available to it other adequate remedies at law and sufficient time within which to pursue those remedies,

all mandamus relief requested by the agency could have been accomplished at the district court level by a declaratory judgment action or in other proceedings, and the petition for issuance of a writ of mandamus was denied. *Idaho Falls Redevelopment Agency v. Countyman*, 118 Idaho 43, 794 P.2d 632 (1990).

50-2013. Bonds as legal investments. — All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by an urban renewal agency pursuant to this act: Provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the

issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of principal and interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [1965, ch. 246, § 13, p. 600.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted. For words "this act", see Compiler's Notes, § 50-2001.

50-2014. Property exempt from taxes and from levy and sale by virtue of an execution. — (a) All property of an urban renewal agency, including funds, owned or held by it for the purposes of this act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against an agency be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of and pledge or lien given pursuant to this act by an agency on its rents, fees, grants or revenues from urban renewal projects.

(b) The property of an urban renewal agency, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and effective the date an urban renewal agency acquires title to such property it shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof: Provided, that such tax exemption shall terminate when the agency sells, leases or otherwise disposes of such property in an urban renewal area for redevelopment to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property. [1965, ch. 246, § 14, p. 600; am. 1972, ch. 156, § 3, p. 344.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-2001. ch. 156 declared an emergency. Approved March 17, 1972.

Effective Dates. — Section 4 of S.L. 1972,

50-2015. Cooperation by public bodies. — (a) For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal

project and related activities authorized by this act, any public body may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to an urban renewal agency; (2) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities; (4) grant or contribute funds to an urban renewal agency and borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county or other public body, or from any other source; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the federal government, an urban renewal agency or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project and related activities; and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the urban renewal agency. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the urban renewal agency, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects and related activities (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency.

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(c) For the purpose of aiding in the planning, undertaking or carrying out of any urban renewal project and related activities of an urban renewal agency, a municipality may (in addition to its other powers and upon such terms, with or without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance: Provided, that nothing contained in this section shall be construed as authorizing a municipality to give credit or make loans to an urban renewal agency.

(d) For the purposes of this section, a municipality may (in addition to its other powers):

(1) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and levy taxes and

assessments for curbs and gutters, streets and sidewalks; zone or rezone any part of the municipality or make exceptions from building regulations; and enter into agreements with an urban renewal agency (which agreements may extend over any period, notwithstanding any provisions or rule of law to the contrary), respecting action to be taken by such municipality pursuant to any of the powers granted by this act:[:]

(2) close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and plan or replan any part of the municipality;

(3) within its area of operation, organize, coordinate and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively; and

(4) assume the responsibility to bear any loss that may arise as the result of the exercise of authority by the urban renewal agency under subsection (d) of section 50-2007, Idaho Code, in the event that the real property is not made a part of the urban renewal project.

(e) For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project and related activities of a municipality, such municipality may issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such municipality. Nothing in this section shall limit or otherwise adversely affect any other section of this act.

(f) Purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan, with or without consideration as the agency may determine. Any public body which purchases, buys or otherwise acquires land in a project area from an agency for development pursuant to this subsection shall become obligated to:

(1) use the property for the purpose designated in the redevelopment plans;

(2) begin the redevelopment of the project area within a period of time which the agency fixes as reasonable; and

(3) comply with other conditions which the agency deems necessary to carry out the purposes of this act. [1965, ch. 246, § 15, p. 600; am. 1987, ch. 259, § 3, p. 536.]

STATUTORY NOTES

Compiler's Notes. — The bracketed semicolon at the end of paragraph (d)(1) was added by the compiler for clarity.

The words enclosed in parentheses so ap-

peared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-2001.

JUDICIAL DECISIONS

Loaning of Credit.

Although action by the city of Boise pursuant to this section may constitute the city's raising money for or donating or lending credit to the Boise redevelopment agency, the prohibitions of art. VIII, § 4 and art. XII, § 4

of the Idaho Constitution are not applicable to the agency since it is a public, rather than a private, enterprise. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

50-2016. Title of purchaser. — Any instrument executed by an urban renewal agency and purporting to convey any right, title or interest in any property under this act shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. [1965, ch. 246, § 16, p. 600.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-2001.

50-2017. Interested public officials, commissioners or employees. — No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property. Any violation of the provisions of this section shall constitute misconduct in office. [1965, ch. 246, § 17, p. 600; am. 1986, ch. 9, § 2, p. 49.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 3 of S.L. 1986, ch. 9 declared an emergency. Approved February 21, 1986.

50-2018. Definitions. — The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by section 50-2006, Idaho Code.

(2) "Municipality" shall mean any incorporated city or town, or county in the state.

(3) "Public body" shall mean the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.

(4) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(5) "Mayor" shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(6) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(7) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Deteriorated area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare. Provided however, this definition shall not apply to any agricultural operation, as defined in section 22-4502(1), Idaho Code, absent the consent of the owner of the agricultural operation, except for an agricultural operation that has not been used for three (3) consecutive years.

(9) "Deteriorating area" shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use; provided, that if such deteriorating area consists of open land the conditions contained in the proviso in section 50-2008(d), Idaho Code, shall apply; and provided further, that any disaster area referred to in section 50-2008(g), Idaho Code, shall constitute a deteriorating area. Provided however, this definition shall not apply to any agricultural operation, as defined in section 22-4502(1), Idaho Code, absent the consent of the owner of the agricultural operation,

except for an agricultural operation that has not been used for three (3) consecutive years.

(10) "Urban renewal project" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

- (a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;
- (b) Demolition and removal of buildings and improvements;
- (c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, off-street parking facilities, public facilities or buildings and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;
- (d) Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the agency itself, at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;
- (e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;
- (f) Acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;
- (g) Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities;
- (h) Lending or investing federal funds; and
- (i) Construction of foundations, platforms and other like structural forms.

(11) "Urban renewal area" means a deteriorated area or a deteriorating area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(12) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan:

- (a) Shall conform to the general plan for the municipality as a whole except as provided in section 50-2008(g), Idaho Code; and
- (b) Shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) "Related activities" shall mean:

(a) Planning work for the preparation or completion of a community-wide plan or program pursuant to section 50-2009, Idaho Code; and

(b) The functions related to the acquisition and disposal of real property pursuant to section 50-2007(d), Idaho Code.

(14) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(15) "Bonds" shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(16) "Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with urban renewal, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(17) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(18) "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five (5) miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town or within the unincorporated area of the county unless a resolution shall have been adopted by the governing body of such other city, town or county declaring a need therefor.

(19) "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

(20) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality. [1965, ch. 246, § 18, p. 600; am. 1970, ch. 103, § 1, p. 256; am. 1987, ch. 258, § 1, p. 524; am. 1987, ch. 259, § 4, p. 536; am. 1990, ch. 430, § 2, p. 1186; am. 2003, ch. 146, § 1, p. 420; am. 2006, ch. 310, § 1, p. 953.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 310, redesignated the subsections, and added the last sentence in subsections (8) and (9).

Compiler's Notes. — Section 19 of S.L. 1965, ch. 246 read: "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or

the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be control-

ling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law."

JUDICIAL DECISIONS

ANALYSIS

Preciseness of definitions.
Relocation costs.

Preciseness of Definitions.

The definitions contained in this statute are sufficiently precise to give adequate guidelines to the local governing body. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Relocation Costs.

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary and subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the

courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

Cited in: *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

50-2019 — 50-2026. Revenue allocation — Procedures — Purposes. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised I.C., §§ 50-2019 — 50-2026, as added by 1987, ch. 258, § 2-9, p. 524, were

repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

50-2027. Limitations on review of adoption or modification of plan, and issuance of bonds. — (1) No direct or collateral action attacking or otherwise questioning the validity of any urban renewal plan, project or modification thereto (including one containing a revenue allocation provision), or the adoption or approval of such plan, project or modification, or any of the findings or determinations of the agency or the local governing body in connection with such plan, project or modification, shall be brought prior to the effective date of the ordinance adopting or modifying the plan. No direct or collateral action attacking or otherwise questioning the validity of bonds issued pursuant to section 50-2012, Idaho Code, or section 50-2026(a), Idaho Code, shall be brought prior to the effective date of the resolution or ordinance authorizing such bonds.

(2) For a period of thirty (30) days after the effective date of the ordinance or resolution, any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding, or any bonds which may be authorized thereby, passed or adopted under the provisions of this chapter shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the effective date of the ordinance, resolution or proceeding, and after such time the validity,

legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of the validity of any adopted plan or bonds issued pursuant to this chapter is not raised within thirty (30) days from the effective date of the ordinance, resolution or preceeding issuing said bonds and fixing their terms, the authority of the plan, the authority adopting the plan, or the authority to issue the bonds, and the legality thereof, the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. [I.C., § 50-2027, as added by 1987, ch. 258, § 10, p. 524; am. 1990, ch. 430, § 6, p. 1186.]

STATUTORY NOTES

Compiler’s Notes. — Section 50-2026, referred to in subsection (1), was repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

The words enclosed in parentheses so ap-

peared in the law as enacted.

Effective Dates. — Section 7 of S.L. 1990, ch. 430 declared an emergency. Approved April 12, 1990.

JUDICIAL DECISIONS

Standing.

This section does not eliminate the need for a petitioner to have satisfied traditional standing requirements when attempting to

invalidate a city’s ordinance that created an urban renewal plan. *Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002).

50-2028 — 50-2030. Revenue allocation termination — Effect of revenue allocation on other tax calculations — Urban renewal agency terminated. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — These sections, which comprised I.C., §§ 50-2028 — 50-2030, as added by 1987, ch. 258, §§ 11-13, p. 524,

were repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

50-2031. Severability. — The provisions of the Idaho Urban Renewal Law of 1965, as it now exists or may hereafter be amended are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 50-2031, as added by 1987, ch. 258, § 14, p. 524.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1987, ch. 258, which is compiled as §§ 50-2018, 50-2027, and 50-2031.

Effective Dates. — Section 15 of S.L. 1987, ch. 258 declared an emergency and

provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1987. Approved April 1, 1987.

50-2032. Severability. — The provisions of this act are hereby declared to be severable; and if any provision of this act or the application of such

provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 50-2030, as added by 1987, ch. 259, § 5, p. 536; am. and redesisg. 2005, ch. 25, § 97, p. 82.]

STATUTORY NOTES

Compiler's Notes. — This section was originally enacted as § 50-2030. It was redesignated as § 50-2032 because §§ 50-2030 and 50-2031 were previously added by §§ 13 and 14 of ch. 258, S.L. 1987. The redesignation

was made permanent by Laws 2005, ch. 25, § 97.

The words "this act" refer to S.L. 1987, ch. 259 which is compiled as §§ 50-2007, 50-2011, 50-2015, 50-2018 and 50-2032.

CHAPTER 21

CONSOLIDATION OF CITIES

SECTION.

- 50-2101. Consolidation of cities.
- 50-2102. Resolution for joint session of governing bodies.
- 50-2103. Petition for consolidation.
- 50-2104. Joint session — Resolution specifying time of election. [Effective until January 1, 2011.]
- 50-2104. Joint session — Resolution specifying time of election. [Effective January 1, 2011.]
- 50-2105. Submission of question to electors — Special election. [Effective until January 1, 2011.]
- 50-2105. Submission of question to electors — election. [Effective January 1, 2011.]
- 50-2106. Results of election certified to secretary of state. [Effective until January 1, 2011.]
- 50-2106. Results of election certified to secretary of state. [Effective January 1, 2011.]

SECTION.

- 50-2107. Election of officers of consolidated corporations. [Effective until January 1, 2011.]
- 50-2107. Election of officers of consolidated corporations. [Effective January 1, 2011.]
- 50-2108. Effective date.
- 50-2109. New corporate successor to former corporations.
- 50-2110. No property to be taxed for prior indebtedness.
- 50-2111. Prior obligations or proceedings.
- 50-2112. Effect of ordinances of consolidated cities.
- 50-2113. Books of smaller city(ies) property of new city.
- 50-2114. Expenses of consolidation. [Effective until January 1, 2011.]
- 50-2114. Expenses of consolidation. [Effective January 1, 2011.]

50-2101. Consolidation of cities. — Two (2) or more cities, each one of which is contiguous to the other, or to one of the other of said cities, all of which shall be incorporated under general law, may become consolidated into one (1) city, to be thereafter governed in the name and under the government of the greater or greatest in population, as shown by the last federal census, pursuant to proceedings had and taken in accordance with the provisions of sections 50-2101 through 50-2114[, Idaho Code]. [1967, ch. 429, § 418, p. 1249.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-2102. Resolution for joint session of governing bodies. — The mayor and council of any city, desiring consolidation with the adjacent city or cities, may institute proceedings for consolidating by passing a resolution wherein it shall be stated that such city desires to be consolidated with the adjacent city or cities and shall also request the governing body or bodies of such adjacent city or cities to fix a time and place for a joint session of the governing bodies of the cities to consider consolidation. [1967, ch. 429, § 419, p. 1249.]

50-2103. Petition for consolidation. — The citizens of one or more contiguous cities may institute proceedings for consolidation by petition. Upon receiving a petition for consolidation by either of the cities proposed to be consolidated, which petition shall be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers, the clerk shall duly record the same and give notice to each of the cities proposed to be consolidated. Within thirty (30) days following the giving of notice, it shall be incumbent on the council(s) to proceed as hereinafter provided. [1967, ch. 429, § 420, p. 1249; am. 1987, ch. 136, § 1, p. 270.]

50-2104. Joint session — Resolution specifying time of election. [Effective until January 1, 2011.] — When a majority of the governing bodies of each of the cities desires consolidation, or petitions signed by the requisite number of qualified electors in each city have been duly received and recorded by each city, a joint resolution signed by the respective mayors, shall set a time for a special election to be held in each of the cities desiring consolidation, which dates shall be not less than sixty (60) days nor more than ninety (90) days following such joint meeting and which resolution shall be recorded in the record of proceeding of each of the cities. [1967, ch. 429, § 421, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2104.

50-2104. Joint session — Resolution specifying time of election. [Effective January 1, 2011.] — When a majority of the governing bodies of each of the cities desires consolidation, or petitions signed by the requisite number of qualified electors in each city have been duly received and recorded by each city, a joint resolution signed by the respective mayors, shall set a time for a special election to be held in each of the cities desiring consolidation. The election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after final adoption, of the joint resolution. [1967, ch. 429, § 421, p. 1249; am. 2009, ch. 341, § 129, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first sentence, deleted “which dates shall be not less than sixty (60) days nor more than ninety (90) days following such joint meeting and which resolution shall be recorded in the record of proceeding of each of the cities” from the end; and added the last sentence.

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2104.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2105. Submission of question to electors — Special election. [Effective until January 1, 2011.] — In each of the cities proposed to be consolidated, on the date fixed by resolution, there shall be held a special election for the purpose of submitting to the qualified electors of each of said cities, the question whether such cities shall become consolidated into one (1) city. Such election in each city shall be conducted according to the provisions of chapter 4, title 50, Idaho Code. [1967, ch. 429, § 422, p. 1249; am. 2007, ch. 202, § 17, p. 620.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 202, substituted “shall be conducted according to the provisions of chapter 4, title 50, Idaho Code” for “shall be conducted in the manner prescribed by sections 50-401 through 50-422, for general and special city elections” in the last sentence.

Compiler’s Notes. — For this section as effective January 1, 2011, see the following

section, also numbered § 50-2105.

Section 18 of S.L. 2007, ch. 202 provides: “SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

50-2105. Submission of question to electors — election. [Effective January 1, 2011.] — In each of the cities proposed to be consolidated, on the date fixed by resolution, there shall be held an election for the purpose of submitting to the qualified electors of each of said cities, the question whether such cities shall become consolidated into one (1) city. [1967, ch. 429, § 422, p. 1249; am. 2007, ch. 202, § 17, p. 620; am. 2009, ch. 341, § 130, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the section catchline and in text, deleted “special” preceding “election”; and deleted the last sentence, which read: “Such election in each city shall be conducted according to the provisions of chapter 4, title 50, Idaho Code.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2105.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2106. Results of election certified to secretary of state. [Effective until January 1, 2011.] — When upon canvassing of the votes, it is determined that a majority of the qualified electors in each of the cities favor consolidation, the clerks of such cities shall, by abstract of results of election, certify that fact to the board of county commissioners. The clerk of such

board shall thereupon record the same and transmit the said original abstract of the result of said election to the office of the secretary of state. Said original abstract shall be filed by the secretary of state in his office immediately upon receiving the same and certificates of the filing of such original abstract in his office shall be transmitted forthwith to the clerk of such board of county commissioners and to the clerks of each of the cities in which such election was held. [1967, ch. 429, § 423, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2106.

50-2106. Results of election certified to secretary of state. [Effective January 1, 2011.] — If a majority of the qualified electors of each city vote in favor of consolidation, the county clerk shall certify the results of the election to the board of county commissioners. The county clerk shall transmit the original abstract of the results of the election to the board of county commissioners. The county clerk shall thereupon transmit the original abstract of the results of the election to the office of the secretary of state. Upon receipt of the original abstract, the secretary of state shall transmit to the county clerk a certificate indicating that the original abstract has been received and filed in his office. [1967, ch. 429, § 423, p. 1249; am. 2009, ch. 341, § 131, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — For this section as effective until January 1, 2011, see the pre-

ceding section, also numbered § 50-2106.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2107. Election of officers of consolidated corporations. [Effective until January 1, 2011.] — In the event that the majority of the votes cast by the electors of each and all such cities proposed to be consolidated shall favor consolidation, and all other acts and proceedings for consolidation of such cities into one (1) consolidated corporation shall have been severally, duly and regularly done and performed as hereinbefore provided, thereupon such city shall proceed to call a special election to be held in all the cities so proposed to be consolidated for the election of officers of the new corporation. Such election shall be held not less than sixty (60) days nor more than ninety (90) days after the filing of such original abstract in the office of the secretary of state, provided, that should the time for holding general city elections be within one hundred twenty (120) days of the time as herein provided for holding said special election, officials of the newly consolidated city shall be elected at said general election. [1967, ch. 429, § 424, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2107.

50-2107. Election of officers of consolidated corporations. [Effective January 1, 2011.] — In the event that the majority of the votes cast by the electors of each and all such cities proposed to be consolidated shall favor consolidation, the city shall proceed to call an election to be held in all the cities so proposed to be consolidated for the election of officers of the new corporation. Such election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after receipt of the original abstract by the secretary of state. [1967, ch. 429, § 424, p. 1249; am. 2009, ch. 341, § 132, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — For this section as effective until January 1, 2011, see the pre-

ceding section, also numbered § 50-2107.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2108. Effective date. — From and after the date of filing an abstract of results of election of officials with the secretary of state, such consolidation shall be deemed to be completed, and such cities shall be deemed to be consolidated into a new corporation under the name of the corporation of the greater or greatest population, and thereupon such new corporation shall be governed in the name of and under the laws and ordinances applicable to such larger or largest city. The officials elected at a special election shall be immediately entitled to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold said offices respectively only until the next general city election in such newly consolidated city, and until their successors are elected and qualified. At the first general city election following the effective date of such newly consolidated city, one-half (1/2) of the city council shall be elected for two (2) year terms, and one-half (1/2) shall be elected for four (4) year terms. The mayor, at such first general city election, shall be elected for a four (4) year term. [1967, ch. 429, § 425, p. 1249.]

50-2109. New corporate successor to former corporations. — Any city, created by the consolidation of two (2) or more cities under the provisions of sections 50-2101 through 50-2114[, Idaho Code], shall for all purposes be deemed and taken to be the successor of the several corporations so consolidated therein; and the title to any property owned or held by any such corporations, in trust or otherwise for public use, shall, upon such consolidation being completed as hereinbefore provided, ipso facto be vested in such new corporation, or any officer of board thereof which has the power to hold or control such property under the law under which the greater or greatest in population of the cities so consolidated was theretofore governed.

The governing body of such newly consolidated corporation shall provide for the payment of the indebtedness of each of the cities consolidated therein, and shall levy against the property obligated therefor at the time of the completion of such consolidation and collect the necessary taxes therefor and cause them to be paid to the persons entitled thereto, and for that purpose and for all other purposes, such new consolidated city and its officers shall be deemed the successor and successors of such cities so consolidated and their respective offices, and succeed to both the property and liabilities of such corporation, not otherwise provided for under sections 50-2101 through 50-2114[, Idaho Code]. [1967, ch. 429, § 426, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to correct the statutory citation style.

50-2110. No property to be taxed for prior indebtedness. — No property in any of the cities consolidated under the provisions of sections 50-2101 through 50-2114[, Idaho Code,] shall ever be taxed to pay any portion of any indebtedness of any of the other corporations contracted, or incurred prior to or existing at the time of such consolidation. The governing body of such newly consolidated corporation shall provide for the payment of the indebtedness of each of the consolidated cities therein and shall levy against the property obligated therefor at the time of the completion of such consolidation and collect the necessary taxes therefor and cause them to be paid to the persons entitled thereto. [1967, ch. 429, § 427, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-2111. Prior obligations or proceedings. — Consolidation of cities effected under the provisions of sections 50-2101 through 50-2114[, Idaho Code,] shall not affect any debts, demands, liabilities or obligations of any kind existing in favor of or against any such city so consolidated at the time of such consolidation or any action or proceeding then pending in any court in which any such debt, demand, liability or obligation of any kind may be involved, or any action or proceeding brought by or against any such city prior to such consolidation; but all such proceedings shall be continued and concluded, by final judgment or otherwise, in all respects the same as if such consolidation had not been effected. [1967, ch. 429, § 428, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-2112. Effect of ordinances of consolidated cities. — All ordinances of any city or cities consolidated under the provisions of sections 50-2101 through 50-2114[, Idaho Code], except those of the one having the greater or greatest population and those not in conflict therewith, shall be deemed repealed and of no further force and effect; provided, however, that such repeal shall not operate to discharge any person from any liability, civil or criminal, then existing, nor to affect any prosecution then pending for any violation of any such ordinances; and all cases then pending in any justices' court, police court or court of record, except of the one having the greater or greatest population, shall upon such consolidation being effected be deemed ipso facto to be transferred to justices' court, police court, or court of record, of the greater or greatest population having jurisdiction of proceedings or of other actions, civil or criminal, of the character so transferred; provided, further, that such repeal shall not apply to ordinances under which vested rights have accrued, or to ordinances relating to proceedings for street or other public improvements or to proceedings for opening, extending, widening or straightening streets or other public places or to proceedings for changing the grade thereof, all of which proceedings shall be continued and conducted by and under the authority of the newly consolidated corporation, with the same force and effect as if continued and conducted by and under the authority of the corporation by which they were commenced. Except as hereinbefore provided, all ordinances of the corporation having the greater or greatest population shall, upon the completion of such consolidation, ipso facto have full force and effect in and throughout the newly consolidated corporation. [1967, ch. 429, § 429, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

JUDICIAL DECISIONS

Cited in: *Perkins v. Pocatello*, 92 Idaho 636, 448 P.2d 250 (1968).

50-2113. Books of smaller city(ies) property of new city. — All records, papers and documents of the smaller city or cities, in the hands of the clerk of such city or cities, shall be transmitted to the clerk of the newly consolidated city and the treasurer of such smaller city or cities shall on demand turn over all money, books, papers or records in his hands belonging to such smaller city or cities to the treasurer of the new corporation. [1967, ch. 429, § 430, p. 1249.]

50-2114. Expenses of consolidation. [Effective until January 1, 2011.] — All proper expenses of proceedings for consolidation shall, if such consolidation be made and completed, be paid by the consolidated city; and if such consolidation is not completed, each city shall pay the expenses of calling and holding its election. [1967, ch. 429, § 431, p. 1249.]

STATUTORY NOTES

Compiler’s Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2114.

50-2114. Expenses of consolidation. [Effective January 1, 2011.] — All proper expenses of proceedings for consolidation shall, if the consolidation is made and completed, be paid by the consolidated city; with the exception of costs of conducting the election, which shall be paid by the county. If consolidation is not completed, each city shall pay its respective share of the expenses of the proposed consolidation, with the exception of the costs of conducting the election, which shall be paid by the county. [1967, ch. 429, § 431, p. 1249; am. 2009, ch. 341, § 133, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section, which formerly read: “All proper expenses of proceedings for consolidation shall if such consolidation be made and completed, be paid by the consolidated city; and if such consolidation is not completed each city shall pay the ex-

penses of calling and holding its election.”
Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2114.
Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 22

DISINCORPORATION PROCEDURE

- SECTION.
- 50-2201. Petition for disincorporation. [Effective until January 1, 2011.]
 - 50-2201. Petition for disincorporation. [Effective January 1, 2011.]
 - 50-2202. Election to determine question. [Effective until January 1, 2011.]
 - 50-2202. Election to determine question. [Effective January 1, 2011.]
 - 50-2203. Canvass of vote. [Effective until January 1, 2011.]
 - 50-2203. Canvass of vote. [Effective January 1, 2011.]
 - 50-2204. Effect of negative vote. [Effective until January 1, 2011.]
 - 50-2204. Effect of negative vote. [Effective January 1, 2011.]

- SECTION.
- 50-2205. Proceedings upon affirmative vote — Order of disincorporation.
 - 50-2206. Determination of indebtedness — Transmission of money and financial data.
 - 50-2207. Disposition of records.
 - 50-2208. Payment of indebtedness.
 - 50-2209. Collection and disposition of current tax levies.
 - 50-2210. Subsequent tax levies authorized.
 - 50-2211. Disposition of surplus funds.
 - 50-2212. County commissioners vested with power to close city affairs.
 - 50-2213. Payment of costs.
 - 50-2214. Affidavit to be filed.

50-2201. Petition for disincorporation. [Effective until January 1, 2011.] — A city existing under the laws of this state may disincorporate after proceedings had as required by sections 50-2201 through 50-2213[, Idaho Code]. The council shall, upon receiving a petition therefor, signed by not less than half of the qualified electors thereof as shown by the vote cast at the last general city election held therein, submit the question of whether such city shall disincorporate to the electors of such corporation. In case such council shall cease to exist or fail to function for a period of two (2) years or more, the petition for said disincorporation of such city signed by a

majority of the residents living within said city, shall be filed with the board of county commissioners of the county in which said city is situated. Upon the filing of such petition, showing that the council has failed to function for at least two (2) years prior thereto or has ceased to exist, such board of county commissioners shall have full power and authority to take all proceedings therein as it [is] authorized by sections 50-2201 through 50-2213[, Idaho Code,] to disincorporate said city. [1967, ch. 429, § 432, p. 1249.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2201.

The bracketed insertions were added by the compiler for clarity and to correct the statutory citation style.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-2201. Petition for disincorporation. [Effective January 1, 2011.] — A city existing under the laws of this state may disincorporate after proceedings had as required by sections 50-2201 through 50-2213, Idaho Code. The council shall, upon receiving a petition therefor, signed by not less than one-half (1/2) of the qualified electors thereof as shown by the vote cast at the last general city election held therein, submit the question of whether such city shall disincorporate to the electors of such corporation. In case such council shall cease to exist or fail to function for a period of two (2) years or more, the petition for said disincorporation of such city signed by a majority of the residents living within said city, shall be filed with the board of county commissioners of the county in which said city is situated. Upon the filing of such petition, showing that the council has failed to function for at least two (2) years prior thereto or has ceased to exist, such board of county commissioners shall have full power and authority to take all proceedings therein as it is authorized by sections 50-2201 through 50-2213, Idaho Code, to disincorporate said city. [1967, ch. 429, § 432, p. 1249; am. 2009, ch. 341, § 134, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, substituted “not less than one-half (1/2)” for “not less than half” in the second sentence.

Compiler's Notes. — For this section as

effective until January 1, 2011, see the preceding section, also numbered § 50-2201.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2202. Election to determine question. [Effective until January 1, 2011.] — Such question shall be submitted at a special election to be held for that purpose, and the governing body of the city or county, as the case may be, shall give notice thereof by publication in a newspaper of general circulation for a period of four (4) weeks prior to such election. Such notice shall state that the question of disincorporating the said city shall be submitted to the qualified electors of the same at the time appointed for such

election, and the electors shall be invited to vote upon such proposition by placing upon their ballots the cross as provided by law, after the words, "For disincorporation" or "Against disincorporation." Such governing body of the city or county, as the case may be, shall also designate in such notice, the place or places at which the polls will be open in said city and shall also appoint and designate in such notice the names of the officers of election. [1967, ch. 429, § 433, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2202.

50-2202. Election to determine question. [Effective January 1, 2011.] — The question of disincorporation shall be submitted at an election on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after the election called by the city council or board of county commissioners. Notice of the election shall be published pursuant to the requirements of section 34-1406, Idaho Code, along with two (2) additional notices published weekly. [1967, ch. 429, § 433, p. 1249; am. 2009, ch. 341, § 135, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. — For this section as effective until January 1, 2011, see the pre-

ceding section, also numbered § 50-2202.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2203. Canvass of vote. [Effective until January 1, 2011.] — The vote at such election shall be taken, canvassed and returned in the same manner as in other elections. Such governing body of the city or county, as the case may be, shall meet on the Monday next succeeding the day of such election and proceed to canvass the votes cast thereat. [1967, ch. 429, § 434, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2203.

50-2203. Canvass of vote. [Effective January 1, 2011.] — The vote at such election shall be taken, canvassed and returned in the same manner as in other elections. The county board of canvassers shall meet within ten (10) days of such election and proceed to canvass the votes cast thereat. [1967, ch. 429, § 434, p. 1249; am. 2009, ch. 341, § 136, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, rewrote the last sentence, which formerly read: “Such governing body of the city or county, as the case may be, shall meet on the Monday next succeeding the day of such election and proceed to canvass the votes cast thereat.”

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2203.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2204. Effect of negative vote. [Effective until January 1, 2011.]

— If it is found by the canvass of said votes that less than two-thirds (2/3) of the votes cast were in favor of disincorporation, such governing body of the city or county, as the case may be, shall declare the petition for disincorporation denied, in which case no other election shall be held on the question of disincorporating said city until after the expiration of two (2) years from the date of the election so held. [1967, ch. 429, § 435, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2204.

50-2204. Effect of negative vote. [Effective January 1, 2011.] — If it is found by the canvass of said votes that less than two-thirds (2/3) of the votes cast were in favor of disincorporation, the county board of canvassers shall declare the petition for disincorporation denied, in which case no other election shall be held on the question of disincorporating said city until after the expiration of two (2) years from the date of the election so held. [1967, ch. 429, § 435, p. 1249; am. 2009, ch. 341, § 137, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, substituted “the county board of canvassers shall declare” for “such governing body of the city or county, as the case may be, shall declare.”

Compiler's Notes. — For this section as

effective until January 1, 2011, see the preceding section, also numbered § 50-2204.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2205. Proceedings upon affirmative vote — Order of disincorporation. — In case it shall appear from said canvass that two thirds (2/3) of all the votes cast were in favor of disincorporation, said county commission shall, under their hands make and file in their office, and cause to be entered upon their record or proceedings, an order that the petition for such disincorporation be granted, and declaring that said corporation be disincorporated, said order to take effect thirty (30) days from and after the holding of the election. [1967, ch. 429, § 436, p. 1249.]

50-2206. Determination of indebtedness — Transmission of money and financial data. — Said county clerk shall, forthwith, after ascertaining by said canvass that said disincorporation has been carried,

determine the amount of indebtedness of said city, the taxes payable, the amount of money in the treasury, and shall take possession thereof within thirty (30) days from the date of said election, he shall transmit a certified statement of said amounts to the board of county commissioners of the county in which said city is situated, and the county clerk shall, before the expiration of said thirty (30) days, turn over, to the treasurer of said county, all moneys of said corporation and said county treasurer shall place said money in a special fund, to be drawn upon as hereinafter provided. [1967, ch. 429, § 437, p. 1249.]

50-2207. Disposition of records. — Upon the disincorporation of said city, every public officer of said city shall immediately turn over, to the board of county commissioners of the county in which said corporation is situated, all public property of every nature and description in their possession. Provided however, that all court records of the police court, if such there be in said corporation, shall be retained by said police judge as justice of the peace of such precinct in which said corporation is situated, and as such justice of the peace, he shall have authority to execute and complete all unfinished business standing on the same. [1967, ch. 429, § 438, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The offices of police court, police judge, and justices of the peace were abolished by S.L. 1969, ch. 100. See § 1-103.

50-2208. Payment of indebtedness. — Nothing contained in sections 50-2201 through 50-2213[, Idaho Code,] shall relieve said city or the territory included in it, from any liability for any debt contracted by such city prior to its disincorporation. All warrants for said indebtedness shall be drawn, by the board of county commissioners of the county in which said corporation is situated, on the fund herein above provided in the county treasury. [1967, ch. 429, § 439, p. 1249.]

STATUTORY NOTES

Cross References. — Fund for paying indebtedness, § 50-2206. tion was added by the compiler to correct the statutory citation style.

Compiler's Notes. — The bracketed inser-

50-2209. Collection and disposition of current tax levies. — If at the time of such disincorporation, a tax shall have been levied by said city and remains uncollected, it shall be the duty of the tax collector of the county in which said corporation is situated to collect said tax when due and pay the same into the county treasury. All property upon which any city tax has been levied and the same has become delinquent, either before or after the date of such disincorporation, and all property, sold for any tax levy by said corporation, may be redeemed by any party interested within the time provided by law by the payment to the county treasurer upon the estimates of the auditor, of the money that would have been necessary to redeem said property, had such city not disincorporated. All moneys paid into the county

treasury under the provisions of sections 50-2201 through 50-2213[, Idaho Code,] shall be placed to the credit of the special fund hereinbefore provided. [1967, ch. 429, § 440, p. 1249.]

STATUTORY NOTES

Cross References. — Special fund, § 50-2206.

Compiler's Notes. — The bracketed inser-

tion was added by the compiler to correct the statutory citation style.

50-2210. Subsequent tax levies authorized. — If, at any time after the disincorporation of said city, it shall be found that there is not sufficient money in the treasury to the credit of the fund, herein above provided, with which to pay any indebtedness of said corporation, the board of county commissioners of said county shall have the power, and it shall be their duty to levy, and there shall be collected from the territory formerly included within said city, a tax or taxes sufficient in amount to pay the indebtedness of said corporation as the same shall become due. Such tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the said county are levied and collected and shall be an additional tax upon the property included within said territory for the payment of said debts. [1967, ch. 429, § 441, p. 1249.]

STATUTORY NOTES

Cross References. — Special fund, § 50-2206.

50-2211. Disposition of surplus funds. — If, after payment of the debts of said corporation, any surplus shall remain in the hands of said county treasurer to the credit of the fund hereinbefore mentioned, the money so remaining shall be transferred to the school fund of the district or districts covered by said city. [1967, ch. 429, § 442, p. 1249.]

STATUTORY NOTES

Cross References. — Special fund, § 50-2206.

50-2212. County commissioners vested with power to close city affairs. — Said board of county commissioners shall make provisions for the collection of the amounts due to said corporation and for the closing up of its affairs, and any act or acts, necessary for such purpose and not otherwise provided, shall, upon the order of said board of county commissioners directing the same, be as fully done and performed by the officer or officers performing similar duties for the said county, and with as full effect as if the same had been performed by the proper officer of said city, before disincorporation. Said county shall succeed to and possess all rights of said corporation in and to said indebtedness and shall have power to sue for or otherwise collect any such debts in the name of the county. [1967, ch. 429, § 443, p. 1249.]

50-2213. Payment of costs. — All costs and expenses of ascertaining the information hereinbefore mentioned and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of said board of county commissioners, provided for in sections 50-2201 through 50-2213[, Idaho Code, shall be paid out of the special fund in said county treasury. [1967, ch. 429, § 444, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-2214. Affidavit to be filed. — When the conditions and procedures set forth herein have been fully satisfied, and a declaration of disincorporation has been recorded in the proceedings of the county commissioners, the county recorder shall within fifteen (15) days, file with the secretary of state, an affidavit of disincorporation stating the date on which the dissolution became effective. [I.C., § 50-2214, as added by 1971, ch. 11, § 1, p. 22.]

CHAPTER 23

REORGANIZATION OF CITIES UNDER GENERAL LAWS

SECTION.

- 50-2301. Cities organized under general incorporating act or special charter — Organization under general laws.
- 50-2302. Petition for organization under general laws — Election. [Effective until January 1, 2011.]
- 50-2302. Petition for organization under general laws — Election. [Effective January 1, 2011.]
- 50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor. [Effective until January 1, 2011.]

SECTION.

- 50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor. [Effective January 1, 2011.]
- 50-2304. Governing body to continue in office.
- 50-2305. Effect of election — Officials.
- 50-2306. Proof of corporate existence.
- 50-2307. Existing rights not affected.
- 50-2308. Election of officers. [Effective until January 1, 2011.]
- 50-2308. Election of officers. [Effective January 1, 2011.]

50-2301. Cities organized under general incorporating act or special charter — Organization under general laws. — Any city within the state of Idaho organized under a general incorporating act or special charter may become organized as a city under the provisions of this act, and the general laws of the state of Idaho by proceedings as hereinafter provided. [1967, ch. 429, § 445, p. 1249.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 6, inclusive, and chs. 48, 49 of tit. 50.

Compiler's Notes. — The words "this act" refer to S.L. 1967, ch. 429 which is generally

compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

Effective Dates. — Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

50-2302. Petition for organization under general laws — Election. [Effective until January 1, 2011.] — Upon receipt of a petition signed by registered qualified electors equal in number to twenty-five per cent (25%) of the total number of voters casting ballots at the last preceding general city election, the governing body shall by resolution issued within ten (10) days after filing of said petition, submit the question of organizing as a city, under this act, and the general laws of the state of Idaho, at a special election to be held at the time specified therein, and within sixty (60) days after said petition is filed. [1967, ch. 429, § 446, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2302.

The words "this act" refer to S.L. 1967, ch.

429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

50-2302. Petition for organization under general laws — Election. [Effective January 1, 2011.] — Upon receipt of a petition signed by registered qualified electors equal in number to twenty-five percent (25%) of the total number of voters casting ballots at the last preceding general city election, the governing body shall by resolution issued within ten (10) days after filing of said petition, submit to the qualified electors of the city the question of organizing as a city, under this chapter, and the general laws of the state of Idaho. The election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after adoption of the resolution by the city council. [1967, ch. 429, § 446, p. 1249; am. 2009, ch. 341, § 138, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first sentence, inserted "to the qualified electors of the city," substituted "chapter" for "act," and deleted "at a special election to be held at the time specified therein, and within sixty (60) days after said petition is filed" from the end; and added the last sentence.

Compiler's Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2302.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor. [Effective until January 1, 2011.] — At such election, conducted under this act, the proposition to be submitted to the electors shall be substantially: "Shall the proposition to organize the City of (name of city) as a city under this act, and the general laws of the state of Idaho be adopted?". An election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. Immediately after, if such proposition be adopted, the clerk of said city shall transmit a certified statement with the date on which such proposition was adopted: [to] the governor; [to] the secretary of state; and to the county auditor of the county in which such city is located.

Upon receipt of said statement, the governor shall thereupon by public proclamation declare that such city shall cease to function under its previous organization, and shall henceforth be governed by this act, and the general laws of the state of Idaho. [1967, ch. 429, § 447, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2303.

The bracketed word "to", in the third sentence of the first paragraph, was twice in-

serted by the compiler to provide clarity.

The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-102.

50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor. [Effective January 1, 2011.]

— At such election, conducted under this chapter, the proposition to be submitted to the electors shall be substantially: "Shall the proposition to organize the City of (name of city) as a city under this chapter, and the general laws of the state of Idaho be adopted?". An election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. Immediately after, if such proposition be adopted, the county clerk shall transmit a certified statement with the date on which such proposition was adopted: to the governor; to the secretary of state; and to the county auditor of the county in which such city is located.

Upon receipt of said statement, the governor shall thereupon by public proclamation declare that such city shall cease to function under its previous organization, and shall henceforth be governed by this chapter, and the general laws of the state of Idaho. [1967, ch. 429, § 447, p. 1249; am. 2009, ch. 341, § 139, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, throughout the section, substituted "chapter" for "act"; and, in the last sentence in the first paragraph, substituted "county clerk" for "clerk of said city."

Compiler's Notes. — For this section as

effective until January 1, 2011, see the preceding section, also numbered § 50-2303.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

50-2304. Governing body to continue in office. — If a majority of the votes cast shall be in favor of the city becoming a city as provided in said election, then the governing body of such city organized under special charter or general incorporating act shall continue to hold office and function as the governing body of the city with all the powers, authority and duties granted a city under the general laws of the state of Idaho thereunto pertaining and shall continue to act until the officers provided for a city by this act, and the general laws of the state of Idaho shall be elected at the next general city election succeeding the issuance of the proclamation of the governor, as herein provided. [1967, ch. 429, § 448, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-2305. Effect of election — Officials. — Immediately upon the proclamation by the governor the authority of the governing body under the special charter or general incorporating act shall cease, and said officials shall have such powers and duties as are provided under this act, and the general laws of the state of Idaho. [1967, ch. 429, § 449, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 50-102.

50-2306. Proof of corporate existence. — All courts within the county within which said city is situated shall take judicial notice of the corporate capacity and existence of such city, and of the fact that such city is identical with and a continuation of such city formerly organized as a city under a special charter or general incorporating act. In all other courts of the state, the corporate capacity and existence of such city may be proved by a copy of the proclamation issued by the governor declaring the same to be a city, duly authenticated and certified by the clerk of such city or the secretary of state, a copy of which proclamation shall be filed in each of said offices. [1967, ch. 429, § 450, p. 1249.]

50-2307. Existing rights not affected. — Any city organized under the provision [provisions] of section [sections] 50-2301 through 50-2308[, Idaho Code,] shall for all purposes be deemed and taken to be, in law, the identical corporation theretofore incorporated and existing under the special charter or general incorporating act; and such reorganization shall in no wise affect or impair the title to any property owned or held by such corporation or in trust therefor, or any debts, demands, liabilities, or obligations existing in favor of or against such corporation, or any proceeding then pending, nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or to discharge any persons from any liability, civil, criminal then existing, for any violations of any such ordinance, but such ordinances, so far as the same are not in conflict with the general laws, shall be and remain in force until repealed or amended by the said city council; provided, that proceedings theretofore commenced shall, after such reorganization, be conducted in the same manner as though the change herein provided had not taken place. [1967, ch. 429, § 451, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions were added by the compiler to provide clarity and to correct the statutory citation style.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Provisions of City Charter.

Former similar section did not continue in force the provisions of the Boise City charter,

but is intended only to preserve property and contract rights and ordinances. *Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967).

50-2308. Election of officers. [Effective until January 1, 2011.] —

If a majority of the votes cast shall be in favor of the city becoming organized under the general laws of the state of Idaho, the next general city election succeeding the issuance of said proclamation by the governor shall in all respects be conducted in the manner required for conducting elections in cities as provided in sections 50-401 through 50-422[, Idaho Code], and the general laws of the state of Idaho. The officers elected at such election shall be the same as are provided in this act, and the governing body of the city, holding office at the time of issuance of such proclamation, shall have full power to prescribe such rules and regulations not in conflict with sections 50-401 through 50-422[, Idaho Code], and with the general laws of the state for the holding of such election as may be necessary for carrying into effect the provisions of sections 50-2301 through 50-2308[, Idaho Code]. In all matters pertaining to such election, the officers of said city shall have the same powers, except as herein otherwise provided, as are conferred upon like officers of cities under this act, in the performance of like duties. [1967, ch. 429, § 452, p. 1249.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2011, see the following section, also numbered § 50-2308.

For words “this act”, see Compiler's Notes, § 50-102.

The bracketed insertions were added by the compiler to correct the statutory citation style.

Sections 50-401 through 50-422, referred to in two places in this section, were repealed by S.L. 1978, ch. 329, which enacted new provisions governing municipal elections. The references in this section probably should be to chapter 4, title 50, Idaho Code.

50-2308. Election of officers. [Effective January 1, 2011.] —

If a majority of the votes cast shall be in favor of the city becoming organized under the general laws of the state of Idaho, the next general city election succeeding the issuance of said proclamation by the governor shall in all respects be conducted in the manner required for conducting elections in cities under the general laws of the state of Idaho. The officers elected at such election shall be the same as are provided in this chapter, and the governing body of the city, holding office at the time of issuance of such proclamation, shall have full power to prescribe such rules and regulations not in conflict with the general laws of the state for the holding of such election as may be necessary for carrying into effect the provisions of sections 50-2301 through 50-2308, Idaho Code. [1967, ch. 429, § 452, p. 1249; am. 2009, ch. 341, § 140, p. 993.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 341, in the first sentence, substituted “under the general laws of the state of Idaho” for “as provided in sections 50-401 through 50-422, and the general laws of the state of Idaho”; in the last sentence, substituted “chapter” for “act” and deleted “with sections 50-401 through 50-422, and” following “not in conflict”; and deleted the former last sentence, which read: “In all matters pertaining to such election, the officers of said city shall

have the same power, except as herein otherwise provided, as are conferred upon like officers of cities under this act, in the performance of like duties.”

Compiler’s Notes. — For this section as effective until January 1, 2011, see the preceding section, also numbered § 50-2308.

Effective Dates. — Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 24

POLICE COURTS

SECTION.

50-2401 — 50-2419. [Repealed.]

50-2401 — 50-2419. Jurisdiction — Hearings — Judgments — Governing Laws — Appeals. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — These sections, which comprised S.L. 1967, ch. 429, §§ 453-471, p. 1249, were repealed by S.L. 1969, ch.

111, § 16. For transfer of jurisdiction to district court, see § 1-103.

CHAPTER 25

UNDERGROUND CONVERSION OF UTILITIES

SECTION.

50-2501. Short title.
 50-2502. Definitions.
 50-2503. Powers conferred.
 50-2504. Basis of assessments.
 50-2505. Resolution for cost and feasibility study.
 50-2506. Costs and feasibility report.
 50-2507. Resolution declaring intention to create district.
 50-2508. Notice of resolution and hearing on protests — Contents.
 50-2509. Filing and hearing of protests and requests for inclusion.
 50-2510. Changes in proposed improvements or in area of district — Ordinance creating improvement district.
 50-2511. Waiver of objections.
 50-2512. Notice of hearing on objections to proposed assessments.
 50-2513. Incorporation of assessment and

SECTION.

bonding provisions from chapter 17, title 50, Idaho Code.
 50-2514. Civil actions — Incorporation of sections 50-1725 through 50-1727, inclusive — Statute of limitations.
 50-2515. Costs.
 50-2516. Construction of and title to extended or converted facilities.
 50-2517. Underground distribution extension or conversion costs and service connections.
 50-2518. Payment to public utility — Refunds.
 50-2519. Reinstallation of overhead facilities not permitted.
 50-2520. No limitation of public utilities commission’s jurisdiction.
 50-2521. Reassessment of benefits.
 50-2522. Invalidity of one provision not to affect others — Exception.
 50-2523. Abatement of construction.

50-2501. Short title. — This act shall be known and cited as the “Idaho Underground Conversion of Utilities Law.” [I.C., § 50-2501, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler's Notes. — The words "this act" refer to S.L. 1971, ch. 212, compiled as §§ 50-2501 to 50-2523.

50-2502. Definitions. — As used in this chapter, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" mean any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances. "Communication facilities" shall not include facilities used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(4) "Extension" or "extending" means any continuation, either overhead or underground, of existing distribution or transmission facilities or the construction of new electric or communication facilities which are reasonably required by prudent electrical or communication practices.

(5) "Governing body" means the board of county commissioners or mayor and council or board of directors as may be appropriate depending on whether the improvement district is located in a county or within a city.

(6) "Ordinance" shall be construed to mean resolution where the governing body properly acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" mean electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any one or more, public or private persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" mean electric or communication facilities located, in whole or in part, beneath the surface of the ground.

(10) A "lot" or "parcel" of land means a single tract or parcel of land containing five (5) acres or less. No single tract or parcel of property containing more than five (5) acres may be included in any district organized under this chapter, unless located within an incorporated city, without the consent of the owner or owners thereof.

Definitions in section 50-1702, Idaho Code, shall be applicable to any sections of chapter 17, title 50, Idaho Code, incorporated in this chapter by reference. [I.C., § 50-2502, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 1, p. 789.]

50-2503. Powers conferred. — The governing body of every county is hereby authorized and empowered to create local improvement districts under this chapter within the unincorporated portion of such county, and the governing body of every city is hereby authorized and empowered to create local improvement districts under this chapter within its territorial limits: to provide for the extension of distribution or transmission facilities or the conversion of existing overhead electric and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter. [I.C., § 50-2503, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 2, p. 789.]

50-2504. Basis of assessments. — Whenever any improvement authorized to be made by any governing body by the terms of this chapter is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous and adjacent lots and land and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet, number of front feet, or other equitable basis, of such lands and lots abutting, adjoining, contiguous and adjacent thereto or included in the improvement district, and in proportion to the benefits accruing to such property by said improvements. The entire cost of the improvement may be assessed against the benefited property as herein provided or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as herein provided for shall include the cost of the improvement, the public utility cost and feasibility report, engineering and clerical service, advertising, inspection, collecting assessments, easements, interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Idaho or any county, city or town, shall not be considered as lands or property benefited by any improvements district, unless such public entity within the boundaries of any improvement district consents in writing, filed before the governing body adopts the ordinance provided for in section 50-2510, Idaho Code. The lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement, unless said consent is filed. [I.C., § 50-2504, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 3, p. 789.]

50-2505. Resolution for cost and feasibility study. — Any governing body may on its own initiative, or upon a petition signed by at least sixty per

cent (60%) of the resident owners of property subject to assessment within such proposed improvement district requesting the creation of an improvement district as provided for in this chapter, pass a resolution by the affirmative vote of three-fourths (3/4) of all members of the governing body at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for a purpose set out in this chapter will promote the public convenience, necessity, and welfare. The resolution must state that costs and expenses will be levied and assessed upon the property benefited and further request that the appropriate public utility serving such area by overhead electric or communication facilities shall, within one hundred twenty (120) days after the receipt of the resolution, make a study of the cost of extension or conversion of its facilities. The resolution shall provide for payment of the public utility's costs and expenses associated with preparing the costs and feasibility report in the event the improvement district is not created. The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution of the governing body shall require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study. The study shall further list each lot or parcel within the proposed improvement impact area. The appropriate public utility serving such improvement district area shall, within one hundred twenty (120) days after receipt of the resolution, make a study of the costs of extension or of conversion, and shall provide the governing body and make available at its office a joint report of the results of the study. [I.C., § 50-2505, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 4, p.*789.]

50-2506. Costs and feasibility report. — The public utility or utilities report shall set forth an estimate of the total costs of extension or conversion. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utilities concerned on the basis of the amended district. The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six (6) months of the submission of the estimate for reasons not within the control of the utility. Should such a delay result in a significant

increase in the conversion cost, new hearings shall be held on the creation of the district. In the event that a ten per cent (10%) or less increase results, only the hearing on the assessments need be held again. [I.C., § 50-2506, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 5, p. 789.]

50-2507. Resolution declaring intention to create district. — On the filing with the clerk or any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, specifying the contribution of the governing body or others, if any, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity and welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and that the governing body will hold a hearing on the proposed improvements at which time they will consider protests filed with the governing body against the proposed improvements for the creation of the district. [I.C., § 50-2507, as added by 1971, ch. 212, § 1, p. 923.]

50-2508. Notice of resolution and hearing on protests — Contents. — Following the passage of the resolution in section 50-2507[, Idaho Code], the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement and any requests for inclusion in the district to be given in the manner provided in subsection (8). Such notice shall:

- (1) Declare that the governing body has passed a resolution of intention to create an improvement district;
- (2) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;
- (3) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;
- (4) State the estimated cost to the property owners, governing body and public utility;
- (5) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the proportionate square footage, front footage, or other equitable basis, as specified;
- (6) State the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvement, or the creation of such district or the benefit to be derived by the real property in the district, or requests to be included in such district;

(7) State that all persons desiring to be included in such district and all property owners liable to be assessed for such work and desiring to make protests shall submit, in writing, such protests or requests for inclusion to the governing body by a specified date not less than fifteen (15) days from the first day of publication of such notice.

(8) Notice shall be given as contemplated by this section in the manner specified in section 50-1714 [50-1713], Idaho Code. [I.C., § 50-2508, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the introductory paragraph was added by the compiler to correct the statutory citation style.

Section 50-1714, referred to in subdivision (8), was repealed by S.L. 1976, ch. 160, § 1. For corresponding provision of new law, see § 50-1713.

50-2509. Filing and hearing of protests and requests for inclusion. — At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvement, or the creation of such district, or the benefits to be derived by the real property in the district, and any property owner desiring to be included in such district may make a written request for inclusion. Such protests or requests must be in writing and be delivered to the clerk of the governing body not later than 5 P.M. of the last day within said period.

At time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests and requests so made, and its decisions shall be final and conclusive. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearing, it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utilities concerned, appear to affect either the cost or the feasibility of the improvement, the hearing shall be adjourned to a fixed time and place and a new cost and feasibility report shall be prepared on the basis of the contemplated changes. Notice and an opportunity to protest shall again be given on the basis of such contemplated changes.

If protests against the making of the improvement are received from the owners of more than two-thirds (2/3) of the assessable property within the proposed improvement district, the district and project shall be abandoned. [I.C., § 50-2509, as added by 1971, ch. 212, § 1, p. 923.]

50-2510. Changes in proposed improvements or in area of district — Ordinance creating improvement district. — After the hearing has been concluded, and after all the protests and requests have been considered, the governing body may make such changes in the proposed improvements or in the area to be included in the district as it may consider desirable or necessary, providing said changes are not substantial. However, no such changes shall be made without a new costs and feasibility report being prepared, and public hearing held, if the public utilities concerned

deem it necessary or such changes are determined to be substantial by the governing body.

The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project. Such ordinance shall be published in the manner provided in subsection (8) of section 50-2509 [50-2508], Idaho Code, but need not be mailed. If an ordinance be adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of such ordinance. Such action shall be subject to the provisions of section 50-2511[, Idaho Code]. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceedings. [I.C., § 50-2510, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertions in the fourth sentence in the second paragraph were added by the compiler to correct the statutory citation style.

The reference to subsection (8) of section 50-2509, in the second sentence of the second paragraph of this section, probably should be to § 50-2508(8).

50-2511. Waiver of objections. — Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with section 50-2509[, Idaho Code,] shall be deemed to have waived any objections to the creation of the district, the making of the improvements and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in chapter 17, title 50, Idaho Code. [I.C., § 50-2511, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was added by the compiler to correct the statutory citation style.

50-2512. Notice of hearing on objections to proposed assessments. — After the preparation of the aforesaid ordinance, notice of a hearing on objections to the proposed assessments shall be given. Such notice shall be given in the same manner as provided under section 50-1713, Idaho Code.

Each notice shall state the time at which the governing body will hear and consider all objections to the assessment roll by the parties aggrieved by such assessments. Such notice shall further state that the owner or owners of any property which is assessed in such assessment roll may file with the clerk of the governing body his written objections to said assessments and to the amount levied on any particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the

total cost of the improvement. Failure to file a written objection pursuant to section 50-2517 [50-2509], Idaho Code, shall constitute the grant of an easement for extension or conversion purposes to the district as provided in said section. The district after obtaining all easements required for the extension or conversion project shall, prior to commencement of construction, convey these easements to the utility. The time within which such objections shall be filed shall be specified in the notice but in no case shall it be less than fifteen (15) days from the date of the first publication of such notice.

The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this chapter. [I.C., § 50-2512, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 6, p. 789.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the second paragraph was added by the compiler to correct the statutory reference.

50-2513. Incorporation of assessment and bonding provisions from chapter 17, title 50, Idaho Code. — The following sections of chapter 17, title 50, Idaho Code, are specifically incorporated herein by this reference as though set out here at length, and any amendments to said sections which are compatible with the original intent of this chapter shall be given effect. Said sections incorporated herein are as follows: Sections 50-1718 through 50-1724, inclusive, Idaho Code, and sections 50-1729 through 50-1732, inclusive, Idaho Code. [I.C., § 50-2513, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Compiler's Notes. — “Sections 50-1718 through 50-1724” and “sections 50-1729 through 50-1732”, cited in this section, refer to versions of those sections before they were repealed by S.L. 1976, ch. 160, § 1. For corresponding provisions of new law, see § 50-1701 et seq.

50-2514. Civil actions — Incorporation of sections 50-1725 through 50-1727, inclusive — Statute of limitations. — Sections 50-1725 through 50-1727, inclusive, Idaho Code, are incorporated herein by this reference as though set out at length herein. Without changing the

intent or effect of the incorporated sections, the following paragraph of this section shall be an additional limitation of any or all actions to test the validity of this chapter.

If an ordinance be adopted establishing the assessment or assessments pursuant to this chapter, such ordinances shall be final and conclusive against all persons, unless an action attacking the validity of any part or all of this law or any or all of the acts or matters contemplated by this law shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of the assessment ordinance. Thereafter, any such action shall be perpetually barred and the organization of said district, the assessment levied pursuant thereto, or any other act or matter contemplated by this statute shall not be directly or collaterally questioned in any suit, action, or proceeding. Any such action shall be given preference over all civil cases pending in the courts of the state except proceedings relating to acts of eminent domain by cities and actions of forcible entry and detainer. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof invalid, inequitable or unjust shall rest upon the party who brings such suit. [I.C., § 50-2514, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Compiler's Notes. — "Sections 50-1725 through 50-1727", cited to in this section, were repealed by S.L. 1976, ch. 160, § 1. For corresponding provisions of new law, see § 50-1718. refers to versions of those sections before they

50-2515. Costs. — In determining costs for an extension or conversion included in the cost and feasibility report required by section 50-2506, Idaho Code, the public utility shall be entitled to amounts included in applicable tariffs, rules or regulations filed with or promulgated by the Idaho public utilities commission or federal communications commission or federal energy regulatory commission. In the event tariffs, rules and regulations do not apply, the public utility shall be entitled to amounts sufficient to repay them for the following, computed according to the uniform system of accounts approved by the Idaho public utilities commission or other appropriate regulating agency, and in the event the public utility is not subject to regulation by governmental agencies, by the utility corporation's system of accounts then in use and in accordance with the accounting procedures of said public utility:

(1) Any and all costs including, without limitation, reasonable acquisition costs associated with obtaining new or expanded easements reasonably necessary to construct the extension or conversion. This shall include new or expanded easements to replace existing easements in those instances where technical considerations or the new facilities require new or expanded easements;

(2) If the estimated cost of constructing a conversion exceeds the recorded original cost of constructing the facilities being replaced, then the cost difference between the two (2);

(3) For extensions, the full cost of the facilities required less depreciation taken as of the date of installation;

(4) For removals, the estimated cost of removing the facilities being replaced less the salvage value of the facilities removed. [I.C., § 50-2515, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 7, p. 789.]

STATUTORY NOTES

Cross References. — Public utilities commission, § 61-201 et seq.

50-2516. Construction of and title to extended or converted facilities. — The public utility concerned shall be responsible for all construction work and may contract out such of the construction work as it deems desirable. Title to the extended or converted facilities shall be at all times solely and exclusively in the public utility involved. [I.C., § 50-2516, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 8, p. 789.]

50-2517. Underground distribution extension or conversion costs and service connections. — The public utility performing the underground distribution extension or conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. Creation of a district for the purpose of underground distribution extension or conversion shall be taken as a consent and grant of easement to the utility and shall be construed as express authority to the public utility and their respective officers, agents and employees to enter upon such lot or parcel for such purpose.

The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service. [I.C., § 50-2517, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 9, p. 789.]

50-2518. Payment to public utility — Refunds. — Upon completion of the extension or conversion contemplated by this chapter, the public utility shall present the governing body with its verified bill for extension or conversion costs as computed pursuant to section 50-2515, Idaho Code, but based upon the actual cost of construction rather than the estimated cost of the facility. In no event shall the bill for extension or conversion costs presented by the public utility exceed the amount of estimated extension or conversion costs by the public utility. In the event the extension or conversion costs are less than the estimated extension or conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such times as the governing body may determine. The bill of the public utility corporation shall be paid within thirty (30) days by the governing body from the improvement district funds

or such other source as is properly designated by the governing body. In determining the actual cost of constructing the facility the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the state or federal regulatory commission and as is in use at the time of the extension or conversion by the public utility involved. All rules and regulations of the utility pertaining to refund provisions for line extensions will also be applicable to an improvement district. [I.C., § 50-2518, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 10, p. 789.]

50-2519. Reinstallation of overhead facilities not permitted. —

Once removed pursuant to this chapter, no overhead electric or communication facilities as defined herein, shall be installed within the boundaries of the local improvement district for conversion of overhead electric and communication facilities, except as authorized herein. [I.C., § 50-2519, as added by 1971, ch. 212, § 1, p. 923.]

50-2520. No limitation of public utilities commission's jurisdiction. — Nothing contained in this chapter shall vest any jurisdiction over public utilities in the governing bodies. The public utilities commission of Idaho shall retain all jurisdiction now or hereafter conferred upon it by law. [I.C., § 50-2520, as added by 1971, ch. 212, § 1, p. 923.]

STATUTORY NOTES

Cross References. — Public utilities commission, § 61-201 et seq.

50-2521. Reassessment of benefits. — In all cases of assessments for improvements under this chapter against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the chapter provisions, or laws governing such assessments, the governing body shall be, and they are hereby, authorized to reassess such special taxes or assessments and to enforce their collection, in accordance with the provisions of law existing at the time the reassessment is made. But no mistake, in description of the property, or the name of the owner, shall be held to affect any assessment or any lien created thereby under the provisions of this chapter, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the cost and expenses of the improvement made and enjoyed by owners of property in any local improvement district where the same is made, it shall be lawful, and the governing body is hereby directed and authorized to make reassessments on all property in said local improvement district sufficient to pay for such improvements, such reassessment to be made and collected in accordance with the provisions of the law existing at the time of its levy. [I.C., § 50-2521, as added by 1971, ch. 212, § 1, p. 923.]

50-2522. Invalidity of one provision not to affect others — Exception. — If any section or provision of this chapter be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of this chapter as a whole, or of any section or provision hereof, which is not specifically so adjudicated unconstitutional or invalid; provided, however, if any section or provision of this chapter concerning the payment to the public utilities shall be adjudged unconstitutional or invalid for any reason in such a way that the payment to the public utilities or the creation of the funds for that purpose is adjudged to be invalid or unconstitutional then such invalidity or unconstitutionality shall invalidate this chapter in its entirety and to this end and in this event the provisions of this chapter are declared to be nonseverable. [I.C., § 50-2522, as added by 1971, ch. 212, § 1, p. 923.]

50-2523. Abatement of construction. — If an improvement district is established pursuant to this chapter, the public utility corporations involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal. [I.C., § 50-2523, as added by 1971, ch. 212, § 1, p. 923.]

CHAPTER 26

BUSINESS IMPROVEMENT DISTRICTS

- SECTION.
- 50-2601. Authorization — Purposes — Special assessments.
 - 50-2602. Definitions.
 - 50-2603. Initiation petition — Contents.
 - 50-2604. Resolution of intention to establish — Contents — Hearing.
 - 50-2605. Notice of hearing.
 - 50-2606. Hearings.
 - 50-2607. Change of boundaries.
 - 50-2608. Special assessments — Classification of businesses.
 - 50-2609. Special assessments — Same basis or rate for classes not required — Factors as to parking facilities.
 - 50-2610. Ordinance to establish — Adoption — Contents.
 - 50-2611. Use of revenue — Contracts to administer operation of district.
 - 50-2612. Use of assessment proceeds restricted.
 - 50-2613. Collection of assessments.
 - 50-2614. Changes in assessment rates.

- SECTION.
- 50-2615. Benefit zones — Authorized — Rates.
 - 50-2616. Benefit zones — Establishment, modification and disestablishment of district provisions and procedure to be followed.
 - 50-2617. Exemption period for new businesses.
 - 50-2618. Disestablishment of district — Hearing.
 - 50-2619. Disestablishment of district — Assets and liabilities.
 - 50-2620. Bids required — Monetary amount.
 - 50-2621. Computing cost of improvement for bid requirement.
 - 50-2622. Existing laws not affected — Chapter supplemental — Purposes may be accomplished in conjunction with other methods.
 - 50-2623. Disclosure requirement prior to lease or sale of property.
 - 50-2624. Notification in the event of lease or sale.

50-2601. Authorization — Purposes — Special assessments. — The legislature hereby authorizes all incorporated cities:

(1) To establish business improvement districts, hereafter referred to as district or districts, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the district;
- (b) Physical improvement and decoration of any public space in the district;
- (c) Promotion of public events which are to take place on or in public places in the district;
- (d) The acquisition and operation of transportation services to promote retail trade activities within the district; and
- (e) The general promotion of retail trade activities in the district.

(2) To levy special assessments on all businesses or business property within the district and specially benefited by a business improvement district to pay the damages or costs incurred therein as provided in this chapter. [I.C., § 50-2601, as added by 1980, ch. 192, § 1, p. 423; am. 1998, ch. 253, § 1, p. 823.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

50-2602. Definitions. — As used in this chapter:

(1) “Business” means all types of business, including vacant structures, common areas, and lots within the district, and including professions.

(2) “Legislative authority” means the legislative authority of any city. [I.C., § 50-2602, as added by 1980, ch. 192, § 1, p. 423; am. 1988, ch. 180, § 1, p. 314.]

50-2603. Initiation petition — Contents. — For the purpose of establishing a business improvement district, an initiation petition may be presented to the legislative authority having jurisdiction of the area in which the proposed business improvement district is to be located. The initiation petition shall contain the following:

- (1) A description of the boundaries of the proposed district;
- (2) The proposed uses and projects to which the proposed special assessment revenues shall be put and the total estimated cost thereof; and
- (3) The estimated rate of levy of special assessment with a proposed breakdown by class of business if such classification is to be used.

The initiating petition shall also contain the signatures of the persons who operate businesses or own business property in the proposed district which would pay fifty percent (50%) of the proposed special assessments. [I.C., § 50-2603, as added by 1980, ch. 192, § 1, p. 423; am. 1998, ch. 253, § 2, p. 823.]

50-2604. Resolution of intention to establish — Contents — Hearing. — The legislative authority, after receiving a valid initiation petition, shall adopt a resolution of intention to establish a district. The resolution

shall state the time and place of a hearing to be held by the legislative authority to consider establishment of a district and shall restate all the information contained in the initiation petition regarding boundaries, projects and uses, and estimated rates of assessment. [I.C., § 50-2604, as added by 1980, ch. 192, § 1, p. 423.]

50-2605. Notice of hearing. — Notice of a hearing held under the provisions of this chapter shall be given by:

(1) One (1) publication of the resolution of intention in a newspaper of general circulation in the city; and

(2) Mailing a complete copy of the resolution of intention to each business in the proposed, or established district. Publication and mailing shall be completed at least ten (10) days prior to the time of the hearing. [I.C., § 50-2605, as added by 1980, ch. 192, § 1, p. 423.]

50-2606. Hearings. — Whenever a hearing is held under this chapter, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses in the proposed district which would pay a majority of the proposed special assessments. [I.C., § 50-2606, as added by 1980, ch. 192, § 1, p. 423.]

50-2607. Change of boundaries. — If the legislative authority decides to change the boundaries of the proposed district, the hearing shall be continued to a time at least fifteen (15) days after such decision and notice shall be given as prescribed in section 50-2605, Idaho Code, showing the boundary amendments, but no resolution of intention is required. [I.C., § 50-2607, as added by 1980, ch. 192, § 1, p. 423.]

50-2608. Special assessments — Classification of businesses. — For purposes of the special assessments to be imposed pursuant to this chapter, the legislative authority may make a reasonable classification of businesses, giving consideration to various factors, including the degree of benefit received from parking only. [I.C., § 50-2608, as added by 1980, ch. 192, § 1, p. 423.]

50-2609. Special assessments — Same basis or rate for classes not required — Factors as to parking facilities. — The special assessments need not be imposed on different classes of business, as determined pursuant to section 50-2608, Idaho Code, on the same basis or the same rate: Provided, however, that the special assessments imposed for the purpose of the acquisition, construction or maintenance of parking facilities for the benefit of the district shall be imposed on the basis of benefit determined by the legislative authority after giving consideration to the total cost to be recovered from the businesses upon which the special assessment is to be imposed, the total area within the boundaries of the business improvement district, the assessed value of the land and improvements within the

district, the total business volume generated within the district and within each business, and such other factors as the legislative authority may find and determine to be a reasonable measure of such benefit. [I.C., § 50-2609, as added by 1980, ch. 192, § 1, p. 423.]

50-2610. Ordinance to establish — Adoption — Contents. — If the legislative authority, following the hearing, decides to establish the proposed district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) The description of the boundaries of such district;

(4) A statement that the businesses in the district established by the ordinance shall be subject to the provisions of the special assessments authorized by section 50-2601, Idaho Code;

(5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business, if such classification is used;

(6) A statement that a business improvement district has been established; and

(7) The uses to which the special assessment revenue shall be put; provided, however, that such use shall conform to the use as declared in the initiation petition presented pursuant to section 50-2603, Idaho Code. [I.C., § 50-2610, as added by 1980, ch. 192, § 1, p. 423.]

50-2611. Use of revenue — Contracts to administer operation of district. — The legislative authority of each city shall have sole discretion as to how the revenue derived from the special assessments is to be used within the scope of the purposes; however, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

The legislative authority may contract with a chamber of commerce or other similar business association operating primarily within the boundaries of the legislative authority to administer the operation of a business improvement district, including any funds derived pursuant thereto; provided, that such administration must comply with all applicable provisions of law including this chapter, with all county or city resolutions and ordinances, and with all rules or procedures lawfully imposed by the state controller or other state agencies. [I.C., § 50-2611, as added by 1980, ch. 192, § 1, p. 423; am. 1994, ch. 180, § 94, p. 420; am. 2003, ch. 32, § 26, p. 115.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Effective Dates. — Section 241 of S.L. 1994, ch 180 provided that such act should

become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to the state controller [1994 S.J.R. No 109, p. 1493]

was adopted at the general election held November 8, 1994. Since such amendment was adopted, the amendment to this section by § 10, of S.L. 1994, ch. 180 became effective January 2, 1995.

50-2612. Use of assessment proceeds restricted. — The special assessments levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose. [I.C., § 50-2612, as added by 1980, ch. 192, § 1, p. 423.]

50-2613. Collection of assessments. — Collections of assessments imposed pursuant to this chapter shall be made in the manner to be determined by the concerned legislative authority. [I.C., § 50-2613, as added by 1980, ch. 192, § 1, p. 423.]

50-2614. Changes in assessment rates. — Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the district, by ordinance adopted after a hearing before the legislative authority.

The legislative authority shall adopt a resolution of intention to change the rate or additional rate of special assessment at least fifteen (15) days prior to the hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing; provided, that proceedings to change the rate or impose an additional rate of special assessments shall terminate if protest is made by businesses in the proposed district which would pay a majority of the proposed increase or additional special assessments. [I.C., § 50-2614, as added by 1980, ch. 192, § 1, p. 423.]

50-2615. Benefit zones — Authorized — Rates. — The legislative authority may, for each of the purposes set out in section 50-2601, Idaho Code, establish and modify one or more separate benefit zones based upon the degree of benefit derived from the purpose and may impose a different rate of special assessment within each such benefit zone. [I.C., § 50-2615, as added by 1980, ch. 192, § 1, p. 423.]

50-2616. Benefit zones — Establishment, modification and disestablishment of district provisions and procedure to be followed. — All provisions of this chapter applicable to establishment or disestablishment of a district also apply to the establishment, modification, or disestablishment of benefit zones pursuant to section 50-2615, Idaho Code. The establishment or the modification of any such zone shall follow the same procedure as provided for the establishment of a business improvement district and the disestablishment shall follow the same procedure as provided for disestablishment of a district. [I.C., § 50-2616, as added by 1980, ch. 192, § 1, p. 423.]

50-2617. Exemption period for new businesses. — Businesses established after the creation of a district within the district shall be exempted

from the special assessments imposed pursuant to this chapter from the date of first occupancy until the next billing date prescribed by the legislative authority. [I.C., § 50-2617, as added by 1980, ch. 192, § 1, p. 423; am. 2003, ch. 204, § 1, p. 544.]

50-2618. Disestablishment of district — Hearing. — (1) The legislative authority may disestablish a district by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the district at least fifteen (15) days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

(2) The legislative authority shall disestablish a district if the businesses in the district which pay a majority of the assessments, petition in writing for such disestablishment. [I.C., § 50-2618, as added by 1980, ch. 192, § 1, p. 423.]

50-2619. Disestablishment of district — Assets and liabilities. — Upon disestablishment of a district, any proceeds of the special assessments, or assets acquired with such proceeds, or liabilities incurred as a result of the formation of such district, shall be subject to disposition as the legislative authority shall determine; provided, however, any liabilities, either current or future, incurred as a result of action taken to accomplish the purposes of section 50-2601, Idaho Code, shall not be an obligation of the general fund or any special fund of the city, but such liabilities shall be provided for entirely from available revenue generated from the projects or facilities authorized by section 50-2601, Idaho Code, or from special assessments on the property specially benefited within the district. [I.C., § 50-2619, as added by 1980, ch. 192, § 1, p. 423.]

50-2620. Bids required — Monetary amount. — Any city authorized by this chapter to establish a business improvement district shall conduct its purchasing activities in accordance with the provisions of chapter 28, title 67, Idaho Code. [I.C., § 50-2620, as added by 1980, ch. 192, § 1, p. 423; am. 2005, ch. 213, § 22, p. 637.]

50-2621. Computing cost of improvement for bid requirement. — The cost of the improvement for the purposes of this chapter shall be aggregate of all amounts to be paid for the labor, materials and equipment on one (1) continuous or interrelated project where work is to be performed simultaneously or in near sequence. Breaking an improvement into small units for the purposes of avoiding the minimum dollar amount prescribed in chapter 28, title 67, Idaho Code, is contrary to public policy and is prohibited. [I.C., § 50-2621, as added by 1980, ch. 192, § 1, p. 423; am. 2005, ch. 213, § 23, p. 637.]

50-2622. Existing laws not affected — Chapter supplemental — Purposes may be accomplished in conjunction with other methods. — This chapter providing for business improvement districts shall not be

deemed or construed to affect any existing act, or any part thereof, relating to special assessments or other powers of counties, and cities, but shall be supplemental thereto and concurrent therewith.

The purposes and functions of business improvement districts as set forth by the provisions of this chapter may be accomplished in part by the establishment of a district pursuant to this chapter and in part by any other method otherwise provided by law, including provisions for local improvements. [I.C., § 50-2622, as added by 1980, ch. 192, § 1, p. 423.]

STATUTORY NOTES

Compiler’s Notes. — Section 2 of S.L. 1980, ch. 192 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such

provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

50-2623. Disclosure requirement prior to lease or sale of property. — Prior to leasing or selling property located within a business improvement district, property owners are required to provide written disclosure to prospective lessees or purchasers that the subject property is located within a business improvement district and that the lessee or purchaser may be responsible for the payment of special assessments to the legislative authority. The written disclosure shall be a statement by the property owner and shall not be construed to be a statement made by any agent representing the property owner. No agent of the property owner shall be authorized to make such a disclosure as provided in this chapter or to verify the same. [I.C., § 50-2623, as added by 2003, ch. 204, § 2, p. 544.]

50-2624. Notification in the event of lease or sale. — (1) Within thirty (30) days of the lease or sale of property located within a business improvement district, the lessor of the subject property in the case of a lease, or the seller of the subject property in the case of a sale, is required to submit a written copy of the notification of the lease or sale and the identity of the lessee or purchaser, to the legislative authority.

(2) The disclosures required by the provisions of this chapter shall be set forth in the following disclosure form. An alternative form may be utilized provided that the terms of such form shall be substantially similar to the terms set forth herein:

Business Improvement District Disclosure

Purchaser or lessee has received notification that the property purchased or leased is located within a business improvement district. Purchaser or lessee understands that they may be responsible to pay special assessments to the legislative authority responsible for the business improvement district.

I/we acknowledge receipt of a copy of this disclosure statement.

Seller/Lessor:	Buyer/Lessee:
.....
Date:	Date:

..... Date: Date:

[I.C., § 50-2624, as added by 2003, ch. 204, § 3, p. 544.]

CHAPTER 27

MUNICIPAL INDUSTRIAL DEVELOPMENT PROGRAM

SECTION.

- 50-2701. Finding and declaration of necessity.
- 50-2702. Definitions.
- 50-2703. Public corporations — Creation, dissolution.
- 50-2704. Board of directors of a public corporation.
- 50-2705. Public corporations — Directors.
- 50-2706. Public corporations — Limitations.
- 50-2707. Public corporations — Audit by state.
- 50-2708. Public corporations — Powers.
- 50-2709. Reporting and assistance.
- 50-2710. Revenue bonds — Provisions.
- 50-2711. Investment of funds.
- 50-2712. Revenue bonds — Refunding.

SECTION.

- 50-2713. Trust agreements.
- 50-2714. Commingling of bond proceeds or revenues with municipal funds prohibited.
- 50-2715. Subleases and assignment.
- 50-2716. Determination of rent.
- 50-2717. Proceedings in the event of default.
- 50-2718. Publication of proceedings — Contest period.
- 50-2719. Tax exemption.
- 50-2720. Taxation.
- 50-2721. Bonds eligible for investment.
- 50-2722. Conveyance of title to user.
- 50-2723. Construction — Supplemental nature of chapter.

50-2701. Finding and declaration of necessity. — The legislature hereby finds and declares that this state urgently needs to promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry to the state; protect and enhance the quality of natural resources and the environment; and promote the products and conservation of energy. [I.C., § 50-2701, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Effective Dates. — Section 2 of S.L. 1982, ch. 119 read: "This act shall be in full force and effect on and after the date of adoption of

house joint resolution no. 17 by the electorate of the state of Idaho as required by law."

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

50-2702. Definitions. — As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Board of directors" means the board of directors of a public corporation.

(2) "Construction" or "construct" means construction and acquisition, whether by devise, purchase, gift, lease or otherwise.

(3) "Facilities" mean land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and

parking, handling and storage areas, and similar auxillary [auxiliary] facilities.

(4) "Financing document" means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement or other agreement for the purpose of providing funds to pay or secure, debt service on revenue bonds.

(5) "Improvement" means reconstruction, remodeling, rehabilitation, extension, and enlargement, and "to improve" means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(6) "Industrial development facilities" mean manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation and energy facilities, excluding facilities to transmit, distribute or produce electrical energy. Recreation facilities, as used in this chapter, shall be limited to ski areas. However, funds raised pursuant to this chapter for ski areas shall be limited in application to the acquisition and preparation of land, acquisition and construction of ski lifts, lighting of ski slopes, construction of access and interior roadways, parking lots, maintenance facilities and maintenance equipment, administrative facilities, and utilities.

(7) "Municipality" means a city or county of this state.

(8) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance or otherwise.

(9) "Project costs" mean costs of:

(a) Acquisition, construction and improvement of any facilities included in an industrial development facility;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of an industrial development facility, including costs of studies assessing the feasibility of an industrial development facility, and including all administrative costs incurred before the issuance of the bonds;

(c) Finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement;

(d) Interest during construction and interest on revenue bonds issued to finance such facility to a date no later than six (6) months subsequent to the estimated date of completion, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this section.

(10) "Revenue bond" means a nonrecourse revenue bond, nonrecourse revenue note or other nonrecourse revenue obligation issued for the purpose of financing an industrial development facility on an interim or permanent basis.

(11) "User" means any individual, partnership, copartnership, firm, company, corporation, investor-owned utility, association, joint stock company, trust, estate, or any other legal entity, or their legal representatives, agents, or assigns acting as lessee, purchaser, mortgagor or borrower under a financing document and may include a party who transfers the right of use

and occupancy to another party by lease, sublease or otherwise. [I.C., § 50-2702, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "auxiliary" in subdivision (3) was inserted by the compiler to correct the spelling.

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2703. Public corporations — Creation, dissolution. — (1) For the purpose of facilitating economic development and employment opportunities in the state of Idaho through the financing of the project costs of industrial development facilities, a municipality may enact an ordinance creating a public corporation for the purposes authorized in this chapter. The ordinance creating the public corporation shall approve a charter for the public corporation containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter shall contain in substance the limitations set forth in section 50-2706, Idaho Code. In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the public corporation and for all other purposes, the public corporation shall be conclusively presumed to have been duly created and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the public corporation by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality shall be admissible in evidence in any suit, action or proceeding.

(2) A public corporation created by a municipality pursuant to this chapter may be dissolved by the municipality if the public corporation:

- (a) Has no property to administer other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and
- (b) All its outstanding obligations have been satisfied.

Such a dissolution shall be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs or activities of a public corporation, including termination of the public corporation if contracts entered into by the public corporation are not impaired. Any net earnings of a public corporation, beyond those necessary for retirement of indebtedness incurred by it, shall not inure to the benefit of any person other than the granting municipality. Upon dissolution of a public corporation, title to all property owned by the public corporation shall vest in the municipality. [I.C., § 50-2703, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2704. Board of directors of a public corporation. — The ordinance creating a public corporation shall include provisions establishing a board of directors to govern the affairs of the corporation, what constitutes a quorum of the board of directors, and how the corporation shall conduct its affairs. The board of directors will consist of no less than three (3) members. [I.C., § 50-2704, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2705. Public corporations — Directors. — It shall be illegal for a director, officer, agent or employee of a corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services or materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a misdemeanor. [I.C., § 50-2705, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when none specified, § 18-113. effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

Effective Dates. — This section became

50-2706. Public corporations — Limitations. — No municipality may give or lend any money or property in aid of a public corporation chartered under the provisions of this chapter; provided, however, that a municipality may accept grants from the United States government or any agency thereof and apply grants in connection with industrial development facilities. The municipality that creates a public corporation shall annually review any financial statements of the public corporation and at all times shall have access to the books and records of the public corporation. No public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county or city within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued pursuant to this chapter unless the issuer makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government. Revenue bonds issued by a corporation under this chapter shall not be considered to constitute a debt of the state, of the municipality or of any other municipal corporation, quasi-municipal corporation, subdivision or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, any money and other

property received from private sources. Each revenue bond shall contain on its face statements to the effect that:

- (a) Neither the state, the municipality or any other municipal corporation, quasi-municipal corporation, subdivision or agency of the state is obligated to pay the principal or the interest thereon;
- (b) No tax funds or governmental revenue may be used to pay the principal or interest thereon; and
- (c) Neither any or all of the faith and credit nor the taxing power of the state, the municipality or any other municipal corporation, quasi-municipal corporation, subdivision or agency thereof is pledged to the payment of the principal or of the interest on the revenue bond.

A public corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds or from the proceeds of revenue bonds. A public corporation established under the terms of this chapter constitutes an authority and an instrumentality of the municipality which creates it (within the meaning of those terms in the regulations of the United States treasury and the rulings of the Internal Revenue Services prescribed pursuant to section 103 of the Internal Revenue Code of 1954, as amended) and may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The public corporation is not a municipal corporation within the meaning of the state constitution and the laws of the state or a political subdivision within the meaning of the state constitution and the laws of the state, including without limitation article VIII, section 4, of the Idaho constitution. A municipality shall not delegate to a public corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain and the police power. [I.C., § 50-2706, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Federal References. — Section 103 of the Internal Revenue Code of 1954, referred to in this section, is compiled as 26 U.S.C. § 103.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2707. Public corporations — Audit by state. — The finances of any public corporation are subject to examination by the legislative council. [I.C., § 50-2707, as added by 1982, ch. 119, § 1, p. 326; am. 1993, ch. 327, § 24, p. 1186.]

STATUTORY NOTES

Cross References. — Legislative council, § 67-427 et seq.

Compiler's Notes. — Section 41 of S.L. 1993, ch. 327 read: "All employees employed

by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council

and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys

appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose."

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2708. Public corporations — Powers. — (1) A public corporation created under this chapter has the following powers with respect to industrial development facilities together with all powers incidental thereto or necessary for the performance thereof:

- (a) To locate, construct and maintain one or more industrial development facilities;
- (b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including renewal of the lease or options to purchase, as its board of directors considers advisable and not in conflict with this chapter;
- (c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for such purchase price and upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;
- (d) To make loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any industrial development facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;
- (e) To issue revenue bonds for the purpose of financing all or part of the project cost of any industrial development facility and to secure the payment of the revenue bonds as provided in this chapter. Issuance of revenue bonds for facilities pursuant to this chapter shall not preclude the issuance of additional revenue bonds in connection with the same facility. Any subsequent bond issue shall recognize and protect any prior pledge made for any prior issue of revenue bonds.
- (f) As security for the payment of the principal of and interest on any revenue bonds, issued, and any agreements made in connection therewith, to mortgage, pledge or otherwise encumber any or all of its industrial development facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the public corporation, to secure any loan made by the public corporation and to pledge the revenues and receipts therefrom;
- (g) To sue and be sued, complain and defend in its corporate name;
- (h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner produced;

(j) Subject to the limitations of section 50-2706, Idaho Code, to borrow money, accept grants from, or contract with any local, state or federal governmental agency or with any financial, public or private corporation;

(k) To make and alter bylaws not inconsistent with this chapter for the administration and regulation of the affairs of the corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To expend surplus fees or charges collected from users or prospective users of industrial development facilities for construction of public facilities including, but not limited to, sidewalks, landscaping, water and sewer systems, roads, extension of utility services and roads, but such expenditures shall be limited to projects which are within the limits and purposes of this chapter; and to conduct or contract for studies to determine features needed by local governments to foster economic development;

(n) To execute financing documents incidental to the powers enumerated in this section.

(2) No public corporation created under this chapter may operate any industrial development facility as a business other than as lessor, seller or lender. The purchase and holding of mortgages, deeds of trust or other security interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

(3) No public corporation may exercise any of the powers authorized in this section or issue any revenue bonds with respect to any industrial development facility unless the industrial development facility is located wholly within the boundaries of the municipality under whose auspices the public corporation is created. In cases involving proposed energy or solid waste disposal facilities which may be located partially or wholly outside the boundaries of the creating municipality, no public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and planning and zoning approval by the county or city within whose planning jurisdiction the proposed industrial development facility lies. [I.C., § 50-2708, as added by 1982, ch. 119, § 1, p. 326; am. 1986, ch. 29, § 1, p. 82.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

JUDICIAL DECISIONS

Cited in: *Waters Garbage v. Shoshone County*, 138 Idaho 648, 67 P.3d 1260 (2003).

50-2709. Reporting and assistance. — (1) Within ten (10) days after the issuance of any revenue bonds, each public corporation shall record the following and any additional information with the department of finance, bureau of securities:

- (a) The name of the issuer;
- (b) The proposed amount of the bonds;
- (c) A short description of the facilities constituting the project and of the person or persons on behalf of whom the issuer issued the bonds; and
- (d) The amount of permanent employment reasonably projected to be created by the existence of each project.

(2) The division of economic and community affairs shall report annually to the legislature and the governor on the amount of revenue bonds authorized and issued, the amount of capital investment undertaken under this chapter and the amount of permanent employment reasonably related to the existence of such industrial development facilities.

(3) The division of economic and community affairs shall provide such advice and assistance to public corporations or municipalities which have created or may wish to create corporations, as the public corporations or municipalities request and the division of economic and community affairs considers appropriate. [I.C., § 50-2709, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Compiler's Notes. — The division of economic and community affairs, referred to in subsections (2) and (3), was abolished by S.L. 1985, ch. 160, which established the department of commerce.

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2710. Revenue bonds — Provisions. — (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, including fluctuating or variable rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form, whether serial bonds or term bonds or any combination of either, the manner of execution of the revenue bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest and the duration of the bonds, not to exceed forty (40) years. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or coupons ceases to be an officer before the delivery of the revenue bonds, such signature shall for all purposes have the same effect as if he had remained in office until delivery. The revenue bonds may be issued in coupon or

registered form or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at a public or private sale for such price and bearing interest at such fixed or variable rates as may be determined by the board of directors and with the consent of the user. The bonds may bear interest at any rate or rates per annum without regard to any interest rate limitation appearing in any other law.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost or for the making of a sum in the amount of all or part of the project cost of the industrial development facility for which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities that are exchangeable for other revenue bonds when the other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and all interest coupons applicable thereto are negotiable instruments within the meaning of article 8, title 28, Idaho Code, the uniform commercial code. [I.C., § 50-2710, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Compiler's Notes. — The reference to the uniform commercial code, in subsection (7), is obsolete, negotiable instruments are now defined and governed by article 3, of the uniform

commercial code, see § 28-3-101 et seq.

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2711. Investment of funds. — An issuer issuing revenue bonds hereunder shall not commingle any funds received from the sale thereof with any other funds in its possession or under its control but may invest any such funds in the manner and in such obligations as shall be provided for in the bond indenture pursuant to which the revenue bonds are issued. [I.C., § 50-2711, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2712. Revenue bonds — Refunding. — Each public corporation may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any revenue bonds issued for an industrial development facility under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and commissions, service fees and other expenses necessary to be paid in connection with the refunding bond issue, and if considered advisable by the public corporation, for the additional purpose of financing improvements, extension or enlargements to the industrial development facility or another industrial development facility. The issuance of the revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the public corporation in respect to the same shall be governed by this chapter insofar as applicable.

Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same project or separate projects or for any other purpose hereunder, and regardless of whether or not the revenue bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. [I.C., § 50-2712, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2713. Trust agreements. — Any bonds issued under this chapter may be secured by a trust agreement between the public corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale or loan revenues to be received from a lessee or purchaser of or borrower with respect to an industrial development facility for the payment of principal of and interest on and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond holders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvements, maintenance, use, repair, operation and insurance of the industrial development facility for which the bonds are authorized, and the custody, safeguarding and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the corporation. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the public corporation considers reasonable and proper for the security of the bondholders which are not in conflict with this chapter. [I.C., § 50-2713, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2714. Commingling of bond proceeds or revenues with municipal funds prohibited. — No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility required or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with funds of the municipality creating the public corporation. [I.C., § 50-2714, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2715. Subleases and assignment. — A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of an industrial development facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract or loan agreement and the use of the industrial development facility shall be consistent with the purposes of this chapter. [I.C., § 50-2715, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2716. Determination of rent. — Before entering into a lease, sale contract or loan agreement with respect to any industrial development facility, the public corporation shall determine that there are sufficient revenues to pay:

(a) The principal of and the interest on the revenue bonds proposed to be issued to finance the industrial development facility;

(b) The amount necessary to be paid each year into any reserve funds which the public corporation considers advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the industrial development facility; and

(c) Unless the terms of the lease, sale contract or loan agreement provide that the lessee or contracting party shall maintain the industrial development facility and carry all proper insurance with respect thereto, the estimated cost of maintaining the industrial facility in good repair and keeping it properly insured. [I.C., § 50-2716, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2717. Proceedings in the event of default. — The proceedings authorizing any revenue bonds under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by

the appointment of a receiver in equity with power to charge and collect rents, purchase price payments and loan repayments, and to apply the revenues from the industrial development facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this chapter to secure revenue bonds issued under this chapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the industrial development facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder. [I.C., § 50-2717, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2718. Publication of proceedings — Contest period. — The resolution authorizing the issuance of any revenue bonds hereunder and the execution of an indenture as security therefor shall be published one (1) time in a newspaper of general circulation in the municipality. Any such indenture, or other instrument authorized in such resolution to be executed, may be incorporated as an exhibit to such resolution but need not be published as part of the resolution. For a period of thirty (30) days from the date of such publication any person in interest may file suit in any court of competent jurisdiction to contest the regularity, formality or legality of the proceedings authorizing the revenue bonds, or the legality of such resolution and its provisions or of the revenue bonds to be issued pursuant thereto and the provisions securing the revenue bonds. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the revenue bonds or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the revenue bonds and the provisions for their payment shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matters. [I.C., § 50-2718, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2719. Tax exemption. — Any bonds issued under the provisions of this chapter, their transfer, and income therefrom, including any interest paid or payable thereon and profit made on the sale thereof, shall be exempt at all times from all taxation in the state of Idaho. [I.C., § 50-2719, as added

by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2720. Taxation. — During any period that property acquired pursuant to this act is leased by a municipalaity [municipality] or public corporation as a lessor, or title thereto is retained by a municipality or public corporation under an installment purchase contract, taxes shall be payable to the same extent as if it were owned by such lessee or installment purchaser and such taxes shall be paid by such lessee or installment purchaser. [I.C., § 50-2720, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1982, ch. 119, which is compiled as §§ 50-2701 to 50-2723.

The bracketed word "municipality" was inserted by the compiler to correct a misspelling.

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2721. Bonds eligible for investment. — The state of Idaho and all counties, cities, port districts and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any revenue bonds issued pursuant to the provisions of this chapter. [I.C., § 50-2721, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2722. Conveyance of title to user. — At or prior to the time the principal of, interest and premium, if any, on any revenue bonds issued hereunder to provide a particular project have been fully paid, the public corporation may execute such deeds and conveyances as are necessary and required to convey its rights, title and interest in such project to any user, provided that if such conveyance is made prior to when the revenue bonds are fully paid, the public corporation has determined that adequate provision has been made for the payment of the principal of, interest and premium, if any, on the bonds as they become due. [I.C., § 50-2722, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

50-2723. Construction — Supplemental nature of chapter. — This chapter supplements and neither restricts nor limits any powers which a municipality or presently authorized corporation might otherwise have under any laws of this state. [I.C., § 50-2723, as added by 1982, ch. 119, § 1, p. 326.]

STATUTORY NOTES

Effective Dates. — This section became effective upon ratification of H.J.R. (S.L. 1982) 17. See Effective Dates, § 50-2701.

CHAPTER 28

IDAHO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT

SECTION.

50-2801. Definitions.

50-2802. Finding and declaration of necessity.

SECTION.

50-2803. Allocation formula.

50-2804. Authority of the governor.

50-2805. Miscellaneous.

50-2801. Definitions. — As used in sections 50-2801 through 50-2805, Idaho Code:

(1) "Bond" means any obligation for which an allocation of the volume cap is required by the code.

(2) "Certificates" mean mortgage credit certificates described in section 25 of the code.

(3) "Code" means the Internal Revenue Code of 1986, as amended, and any related treasury regulations.

(4) "Executive order" means the executive order or other administrative action of the governor pursuant to section 50-2804, Idaho Code, and any amendments thereto.

(5) "Governmental unit" means (i) any county, city or port district, (ii) any public corporation created pursuant to section 50-2703, Idaho Code, or other entity acting on behalf of one or more counties, cities, or both, (iii) the state, or (iv) any other entity authorized to issue bonds.

(6) "Project" means the facility or facilities to be financed in whole or in part with the proceeds of the bonds, or a program in which the proceeds of the bonds are used directly or indirectly to finance loans to individuals for educational expenses.

(7) "State" means the state of Idaho, any of its agencies, and any of its institutions of higher education.

(8) "State ceiling" means the ceiling for the state as computed under section 146(d) of the code.

(9) "Volume cap" means the volume cap for the state as computed under section 146 of the code.

(10) "Year" means each calendar year beginning calendar year 1987. [I.C., § 50-2801, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 1, p. 959.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Federal References. — The reference to section 25 of the code is to section 25 of the Internal Revenue Code, codified as 26 USCS § 25.

The Internal Revenue Code of 1986, referred to in subdivision (3) of this section, is compiled throughout 26 U.S.C. Section 146 of the code, referred to in subdivisions (8) and (9), is compiled as 26 U.S.C. § 146.

50-2802. Finding and declaration of necessity. — The legislature hereby finds and declares that the Tax Reform Act of 1986 imposes an annual state ceiling on the amount of bonds or certificates that may be issued, the interest on which is excludable from gross income for purposes of federal income taxation; that section 146(e)(1) of the code provides that the legislature may enact a different formula for allocating the state ceiling among the governmental units different from the formula contained in the code; and that a different formula is necessary to allocate the state ceiling by the least complicated method possible and to insure an efficient use of the state ceiling. [I.C., § 50-2802, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 2, p. 959.]

STATUTORY NOTES

Federal References. — The Tax Reform Act of 1986, referred to in this section, is compiled throughout 26 U.S.C.

Section 146(e)(1) of the code, referred to in this section, is compiled as 26 U.S.C. § 146(e)(1).

50-2803. Allocation formula. — The entire state ceiling for the year, including any carry-forward under section 146(f) of the Internal Revenue Code, shall be allocated by the following formula. The state ceiling shall be allocated by the state to governmental units, as needed to finance qualified projects and programs under the Internal Revenue Code, as amended, on the basis of effective utilization, need, economic impact and efficient distribution of resources throughout the state by the department of commerce. The allocation formula established by this section shall be implemented and administered by the governor pursuant to the terms and provisions of an executive order which shall make provisions for priorities of projects and programs based on the formula. No qualified applicant for the state ceiling shall render decisions in the allocation formula. [I.C., § 50-2803, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 3, p. 959; am. 2000, ch. 432, § 1, p. 1389.]

STATUTORY NOTES

Federal References. — Section 146(f) of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. § 146(f).

50-2804. Authority of the governor. — The governor is authorized and directed to provide for the implementation and administration of the allocation formula established in section 50-2803, Idaho Code, by executive order. The executive order shall: (i) establish rules and procedures for the form, contents, submission, processing, priorities and approval of applications for allocations of the state ceiling; (ii) designate an agency for receipt, verification and approval of applications and for authorization of allocations; (iii) provide for the carry-forward of an allocation under section 146(f) of the code; (iv) provide for the issuance to governmental units of certificates evidencing an allocation of the state ceiling; (v) establish a period of time within which allocations must be used; (vi) provide for a means of reallocating portions of the state ceiling with respect to allocations for bonds or certificates that are not actually issued or are issued in a lesser amount than that portion of the state ceiling which was allocated to the bonds; and (vii) provide for, through the establishment of rules and procedures or otherwise, any other matters necessary or desirable to implement and administer the allocation formula and to provide for an efficient use of the state ceiling. [I.C., § 50-2804, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 4, p. 959; am. 2000, ch. 432, § 2, p. 1389.]

STATUTORY NOTES

Federal References. — Section 146(f) of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. § 146(f).

50-2805. Miscellaneous. — (1) No action taken pursuant to this chapter shall be deemed to create an obligation, debt or liability of any governmental unit or be deemed to constitute an approval of any obligations issued or to be issued hereunder.

(2) If any provision of this chapter shall be held to be or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this chapter or render it invalid, inoperative or unconstitutional. To the extent this chapter shall be held to be or shall, in fact, be invalid, inoperative or unconstitutional, all allocations of the state ceiling previously made under this chapter shall be treated as allocations made by the legislature.

(3) The state pledges and agrees with the holders of any bonds with respect to a project for which an allocation of the state ceiling was applied for by a governmental unit and which has been granted under this chapter that the state will not retroactively alter the allocation of the state ceiling to the governmental unit for such bonds. [I.C., § 50-2805, as added by 1985, ch. 227, § 1, p. 543.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1985, ch. 227 provided that the act should become effective on and after January 1, 1986.

CHAPTER 29

LOCAL ECONOMIC DEVELOPMENT ACT

SECTION.
50-2901. Short title.
50-2902. Findings and purpose.
50-2903. Definitions.
50-2904. Authority to create revenue allocation area.
50-2905. Recommendation of urban renewal agency.
50-2906. Public hearing and ordinance required.
50-2907. Transmittal of revenue allocation

SECTION.
area description and other documents to taxing agencies.
50-2908. Determination of tax levies — Creation of special fund.
50-2909. Issuance of bonds — Bond provisions.
50-2910. Bonds not, general obligation of agency or municipality.
50-2911. Limitations on review.
50-2912. Severability.

50-2901. Short title. — This act may be known and cited as the “Local Economic Development Act.” [1988, ch. 210, § 1, p. 393.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

Compiler’s Notes. — The words “this act” refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

RESEARCH REFERENCES

A.L.R. — Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or

local governmental agencies, of economic development bonds in support of private business enterprise. 39 A.L.R.4th 1096.

50-2902. Findings and purpose. — It is hereby found and declared that there exists in municipalities a need to raise revenue to finance the economic growth and development of urban renewal areas and competitively disadvantaged border community areas. The purpose of this act is to provide for the allocation of a portion of the property taxes levied against taxable property located in a revenue allocation area for a limited period of time to assist in the financing of urban renewal plans, to encourage private development in urban renewal areas and competitively disadvantaged border community areas, to prevent or arrest the decay of urban areas due to the inability of existing financing methods to promote needed public improvements, to encourage taxing districts to cooperate in the allocation of future tax revenues arising in urban areas and competitively disadvantaged border community areas in order to facilitate the long-term growth of their common tax base, and to encourage private investment within urban areas and competitively disadvantaged border community areas. The foregoing purposes are hereby declared to be valid public purposes for municipalities. [1988, ch. 210, § 2, p. 393; am. 1990, ch. 430, § 3, p. 1186; am. 1994, ch. 381, § 1, p. 1222.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

JUDICIAL DECISIONS

Cited in: Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

50-2903. Definitions. — The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) “Act” or “this act” means this revenue allocation act.

(2) “Agency” or “urban renewal agency” means a public body created pursuant to section 50-2006, Idaho Code.

(3) “Authorized municipality” or “municipality” means any county or incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.

(4) “Base assessment roll” means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allocation area that becomes taxable after the date of the base assessment roll.

(5) “Budget” means an annual estimate of revenues and expenses for the following fiscal year of the agency. An agency shall, by September 1 of each calendar year, adopt and publish, as described in section 50-1002, Idaho Code, a budget for the next fiscal year. An agency may amend its adopted budget using the same procedures as used for adoption of the budget. For the fiscal year that immediately predates the termination date for an urban renewal plan involving a revenue allocation area or will include the termination date, the agency shall adopt and publish a budget specifically for the projected revenues and expenses of the plan and make a determination as to whether the revenue allocation area can be terminated before the January 1 of the termination year pursuant to the terms of section 50-2909(4), Idaho Code. In the event that the agency determines that current tax year revenues are sufficient to cover all estimated expenses for the current year and all future years, by September 1 the agency shall adopt a resolution advising and notifying the local governing body, the county auditor, and the state tax commission and recommending the adoption of an ordinance for termination of the revenue allocation area by December 31 of

the current year and declaring a surplus to be distributed as described in section 50-2909, Idaho Code, should a surplus be determined to exist. The agency shall cause the ordinance to be filed with the office of the county recorder and the Idaho state tax commission as provided in section 63-215, Idaho Code. Upon notification of revenues sufficient to cover expenses as provided herein, the increment value of that revenue allocation area shall be included in the net taxable value of the appropriate taxing districts when calculating the subsequent property tax levies pursuant to section 63-803, Idaho Code. The increment value shall also be included in subsequent notification of taxable value for each taxing district pursuant to section 63-1312, Idaho Code, and subsequent certification of actual and adjusted market values for each school district pursuant to section 63-315, Idaho Code.

(6) "Clerk" means the clerk of the municipality.

(7) "Competitively disadvantaged border community area" means a parcel of land consisting of at least forty (40) acres which is situated within the jurisdiction of a county or an incorporated city and within twenty-five (25) miles of a state or international border, which the governing body of such county or incorporated city has determined by ordinance is disadvantaged in its ability to attract business, private investment, or commercial development, as a result of a competitive advantage in the adjacent state or nation resulting from inequities or disparities in comparative sales taxes, income taxes, property taxes, population or unique geographic features.

(8) "Deteriorated area" means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improve-

ments, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(9) "Facilities" means land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxiliary and related facilities.

(10) "Increment value" means the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is a positive value.

(11) "Local governing body" means the city council or board of county commissioners of a municipality.

(12) "Plan" or "urban renewal plan" means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to section 50-2008, Idaho Code, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvement;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area or competitively disadvantaged border community area, the urban renewal objectives of this act in accordance with the urban renewal plan or the competitively disadvantaged border community area ordinance.

(d) Disposition of any property acquired in the urban renewal area or the competitively disadvantaged border community area (including sale, initial leasing or retention by the agency itself) or the municipality creating the competitively disadvantaged border community area at its

fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area or the competitively disadvantaged border community area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area or competitively disadvantaged border community area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities or where necessary to accomplish the purposes for which a competitively disadvantaged border community area was created by ordinance;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(14) "Project costs" includes, but is not limited to:

(a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;

(b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;

(c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;

(d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(e) Direct administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(f) Relocation costs;

(g) Other costs incidental to any of the foregoing costs.

(15) "Revenue allocation area" means that portion of an urban renewal area or competitively disadvantaged border community area the equalized assessed valuation (as shown by the taxable property assessment rolls) of which the local governing body has determined, on and as a part of an urban renewal plan, is likely to increase as a result of the initiation of an urban renewal project or competitively disadvantaged border community area. The base assessment roll or rolls of revenue allocation area or areas shall not exceed at any time ten percent (10%) of the current assessed valuation of all taxable property within the municipality.

(16) "State" means the state of Idaho.

(17) "Tax" or "taxes" means all property tax levies upon taxable property.

(18) "Taxable property" means taxable real property, personal property, operating property, or any other tangible or intangible property included on the equalized assessment rolls.

(19) "Taxing district" means a taxing district as defined in section 63-201, Idaho Code, as that section now exists or may hereafter be amended.

(20) "Termination date" means a specific date no later than twenty-four (24) years from the effective date of an urban renewal plan or as described in section 50-2904, Idaho Code, on which date the plan shall terminate. Every urban renewal plan shall have a termination date that can be modified or extended subject to the twenty-four (24) year maximum limitation. Provided however, the duration of a revenue allocation financing provision may be extended as provided in section 50-2904, Idaho Code. [1988, ch. 210, § 3, p. 393; am. 1990, ch. 430, § 4, p. 1186; am. 1994, ch. 381, § 2, p. 1222; am. 1996, ch. 322, § 54, p. 1029; am. 2000, ch. 275, § 1, p. 893; am. 2002, ch. 143, § 2, p. 394.]

STATUTORY NOTES

Cross References. — State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

Compiler's Notes. — The words "this act"

The words enclosed in parentheses so appeared in the law as enacted.

50-2904. Authority to create revenue allocation area. — An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this chapter, as part of an urban renewal plan or competitively disadvantaged border community area ordinance. A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area or thereafter as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area. Urban renewal plans existing prior to the effective date of this section may be modified to include a revenue allocation financing provision. Except as provided in subsections (1), (2) and (3) of this section, no revenue allocation provision of an urban renewal plan or competitively disadvantaged border community area ordinance, including all amendments thereto, shall have a duration exceeding twenty-four (24) years from the date the ordinance is approved by the municipality; and provided further, no additions to the land area of an existing revenue allocation area shall be interpreted to or shall cause an extension of the date of the twenty-four (24) year limit that was originally established for the revenue allocation area. Notwithstanding these limitations, the duration of the revenue allocation financing provision may be extended if:

(1) The maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation

financing provision, provided such bond maturity is not greater than thirty (30) years; or

(2) The urban renewal agency determines that it is necessary to refinance outstanding bonds payable from the revenue allocation financing provision to a maturity exceeding the twenty-four (24) year duration of the revenue allocation financing provision in order to avoid a default on the bonds; or

(3) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged border community area ordinance prior to July 1, 2000, in which is defined the duration of the plan beyond a period of twenty-four (24) years, in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community area ordinance; and

(4) During the extensions set forth in subsections (1) and (2) of this section, any revenue allocation area revenues exceeding the amount necessary to repay the bonds during the period exceeding the twenty-four (24) year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis. [1988, ch. 210, § 4, p. 393; am. 1994, ch. 381, § 3, p. 1222; am. 2000, ch. 275, § 2, p. 893; am. 2002, ch. 143, § 3, p. 394; am. 2009, ch. 218, § 1, p. 680.]

STATUTORY NOTES

Amendments. — The 2009 amendment, by ch. 218, in the introductory paragraph, in the next-to-last sentence, substituted “Except as provided in subsections (1), (2) and (3) of this section” for “Except as provided below,” and added the language beginning “and pro-

vided further, no additions to the land area of an existing revenue allocation area,” and in the last sentence, added “Notwithstanding these limitations”; and, in subsections (3) and (4), inserted “area.”

50-2905. Recommendation of urban renewal agency. — In order to implement the provisions of this chapter, the urban renewal agency of the municipality shall prepare and adopt a plan for each revenue allocation area and submit the plan and recommendation for approval thereof to the local governing body. The plan shall include a statement listing:

(1) The kind, number, and location of all proposed public works or improvements within the revenue allocation area;

(2) An economic feasibility study;

(3) A detailed list of estimated project costs;

(4) A fiscal impact statement showing the impact of the revenue allocation area, both until and after the bonds are repaid, upon all taxing districts levying taxes upon property on the revenue allocation area; and

(5) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred.

(6) A termination date for the plan and the revenue allocation area as provided for in section 50-2903(20), Idaho Code. In determining the termination date, the plan shall recognize that the agency shall receive allocation

of revenues in the calendar year following the last year of the revenue allocation provision described in the urban renewal plan.

(7) A description of the disposition or retention of any assets of the agency upon the termination date. Provided however, nothing herein shall prevent the agency from retaining assets or revenues generated from such assets as long as the agency shall have resources other than revenue allocation funds to operate and manage such assets. [1988, ch. 210, § 5, p. 393; am. 2002, ch. 143, § 4, p. 394.]

50-2906. Public hearing and ordinance required. — (1) To adopt a new urban renewal plan or create a competitively disadvantaged border community area containing a revenue allocation financing provision, the local governing body of an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and section 50-2008, Idaho Code. To modify an existing urban renewal plan, to add or change a revenue allocation, an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and conduct a public hearing as provided in section 50-2008(c), Idaho Code. No urban renewal project, plan, competitively disadvantaged border community area or modification thereto, or revenue allocation financial provision shall be held ineffective for failure to comply with the requirements of this section if compliance with the section is substantial and in good faith and administrative authority of both the local governing body and urban renewal agency does not extend beyond the municipal boundary of the authorized municipality. Urban renewal plans and revenue allocation financing provisions may be held ineffective if an urban renewal area or revenue allocation area extends outside the municipal boundary of an authorized municipality and a transfer of powers ordinance has not been adopted by the cooperating county.

(2) A revenue allocation financing provision adopted in accordance with this chapter shall be effective retroactively to January 1 of the year in which the local governing body of the authorized municipality enacts such ordinance.

(3) The local governing body of an authorized municipality shall prepare a notice stating: (a) that an urban renewal plan or modification thereto or a competitively disadvantaged border community area has been proposed and is being considered for adoption, and that such plan or modification thereto or proposal to create a competitively disadvantaged border community area contains a revenue allocation financing provision that will cause property taxes resulting from any increases in equalized assessed valuation in excess of the equalized assessed valuation as shown on the base assessment roll to be allocated to the agency for urban renewal and competitively disadvantaged border community area purposes; and (b) that an agreement on administration of a revenue allocation financing provision extending beyond the municipal boundary of the authorized municipality has been negotiated with the cooperating county having extraterritorial power and that the agreement has been formalized by a transfer of power ordinance adopted by that county; and (c) that a public hearing on such plan or modification will

be held by the local governing body pursuant to section 50-2008(c), Idaho Code. The notice shall also state the time, date, and place of the hearing. At least thirty (30) days but not more than sixty (60) days prior to the date set for final reading of the ordinance, the local governing body shall publish the notice in a newspaper of general circulation and transmit the notice, together with a copy of the plan and recommendation of the urban renewal agency or the municipality which by ordinance created the competitively disadvantaged border community area, to the governing body of each taxing district which levies taxes upon any taxable property in the revenue allocation area and which would be affected by the revenue allocation financing provision of the urban renewal plan proposed to be approved by the local governing body. [1988, ch. 210, § 6, p. 393; am. 1994, ch. 381, § 4, p. 1222; am. 2000, ch. 162, § 1, p. 410; am. 2000, ch. 275, § 3, p. 893.]

STATUTORY NOTES

Amendments. — This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 162, in subsection (1), inserted “or revenue allocation financial provision” in the third sentence, and added “and administrative authority of both the local governing body and urban renewal agency does not extend beyond the municipal boundary of the authorized municipality”, added the last sentence; in subsection (3), inserted “an agreement on administration of a revenue allocation financing provision ex-

tending beyond the municipal boundary of the authorized municipality has been negotiated with the cooperating county having extraterritorial power and that the agreement has been formalized by a transfer of power ordinance adopted by that county; and (c) that” preceding “a public hearing” and made minor punctuation changes.

The 2000 amendment, by ch. 275, inserted “or proposal to create a competitively disadvantaged border community area” preceding “contains a revenue allocation financing provision” in subsection (3).

50-2907. Transmittal of revenue allocation area description and other documents to taxing agencies. — (1) After the effective date of an ordinance enacted by the local governing body of an authorized municipality, the clerk of the authorized municipality shall transmit, to the county auditor and tax assessor of the county in which the revenue allocation area is located, to the affected taxing districts, and to the state tax commission, a copy of the ordinance enacted, a copy of the legal description of the boundaries of the revenue allocation area, and a map indicating the boundaries of the revenue allocation area.

(2) For revenue allocation areas extending beyond the corporate municipal boundary of the authorized municipality, the copy of the ordinance enacted by the authorized municipality shall include, as an attachment, a copy of the transfer of powers ordinance adopted by the cooperating county under section 50-2906(3)(b), Idaho Code.

(3) Such documents shall be transmitted within the time required by section 63-215, Idaho Code. [1988, ch. 210, § 7, p. 393; am. 2000, ch. 114, § 1, p. 252; am. 2000, ch. 162, § 2, p. 410.]

STATUTORY NOTES

Cross References. — State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

Amendments. — This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 114, deleted “or plan” preceding “indicating the boundaries” in the first sentence, and substituted “within the time required by section 63-215, Idaho Code” for “as promptly as practicable

following the enactment of such ordinance” in the last sentence.

The 2000 amendment, by ch. 162, divided the former paragraph into present subsections (1) and (3); and added subsection (2).

50-2908. Determination of tax levies — Creation of special fund.

— (1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property, except the current equalized assessed valuation shall be used for calculating the tax rate for:

(a) Levies for refunds and credits pursuant to section 63-1305, Idaho Code, and any judgment pursuant to section 33-802(1), Idaho Code, certified after December 31, 2007;

(b) Levies permitted pursuant to section 63-802(3), Idaho Code, certified after December 31, 2007;

(c) Levies for voter approved general obligation bonds of any taxing district and plant facility reserve fund levies passed after December 31, 2007;

(d) Levies set forth in paragraphs (1)(a) through (c) of this subsection, first certified prior to December 31, 2007, when the property affected by said levies is included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or any taxing district after December 31, 2007; and

(e) School levies for supplemental maintenance and operation pursuant to section 33-802(3) and (4), Idaho Code, approved after December 31, 2007.

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and

(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1)(a) through (e) of this section.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter, shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one (1) or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2)(b) of this section.

(4) For the purposes of section 63-803, Idaho Code, during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy other than the levy specified in subsection (1)(a) through (e) of this section, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002 and 63-1313, Idaho Code, reference in the Idaho Code to the term “market value for assessment purposes” (or any other such similar term) shall mean market value for assessment purposes as defined in section 63-208, Idaho Code. [1988, ch. 210, § 8, p. 393; am. 1996, ch. 208, § 13, p. 658; am. 1996, ch. 322, § 55, p. 1029; am. 1997, ch. 117, § 8, p. 298; am. 2006 (1st E.S.), ch. 1, § 14; am. 2008, ch. 253, § 1, p. 741; am. 2009, ch. 50, § 1, p. 131.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, deleted former paragraph (2)(a)(iii), which read: “If such taxing district is a school district, a further portion of the taxes levied by such district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount equal to the percentage specified in section 33-1002(7)(a), Idaho Code, multiplied by the difference between the current equalized assessed valuation of such taxable property and the equalized assessed valuation of such taxable property as shown on the base assessment roll.”

The 2008 amendment, by ch. 253, added the exception in the introductory paragraph in subsection (1) and added paragraphs (1)(a) through (1)(e) and (2)(a)(iii); and in subsection (4), inserted “other than the levy specified in subsection (1)(a) through (e) of this section.”

The 2009 amendment, by ch. 50, in subsection (1)(e), inserted “and (4)” and deleted “or in the case of charter school districts any supplemental levy that does not exceed two (2) years in duration” from the end.

Compiler’s Notes. — The words enclosed in parentheses so appeared in the law as enacted

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006.’”

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 - 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 4 of S.L. 2008, ch. 253 declared an emergency retroactively to January 1, 2008 and approved March 25, 2008.

Section 2 of S.L. 2009, ch. 50 declared an emergency. Approved March 23, 2009.

50-2909. Issuance of bonds — Bond provisions. — (1) If the local governing body of an authorized municipality has enacted an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency established by such municipality is hereby authorized and empowered:

- (a) To apply the revenues allocated to it pursuant to section 50-2908, Idaho Code, for payment of the projected costs of any urban renewal project located in the revenue allocation area;
- (b) To borrow money, incur indebtedness and issue one (1) or more series of bonds to finance or refinance, in whole or in part, the urban renewal projects authorized pursuant to such plan within the limits established by paragraph (c) of this subsection; and
- (c) To pledge irrevocably to the payment of principal of and interest on such moneys borrowed, indebtedness incurred or bonds issued by the agency the revenues allocated to it pursuant to section 50-2908, Idaho Code.

All bonds issued under this section shall be issued in accordance with section 50-2012, Idaho Code, except that such bonds shall be payable solely from the special fund or funds established pursuant to section 50-2908, Idaho Code.

(2) The agency shall be obligated and bound to pay such borrowed moneys, indebtedness, and bonds as the same shall become due, but only to the extent that the moneys are available in a special fund or funds established under section 50-2908, Idaho Code; and the agency is authorized to maintain an adequate reserve therefor from any moneys deposited in such a special fund or funds.

(3) Nothing in this chapter shall in any way impair any powers an urban renewal agency may have under subsection (a) of section 50-2012, Idaho Code.

(4) When the revenue allocation area plan budget described in section 50-2903(5), Idaho Code, estimates that all financial obligations have been provided for, the principal of and interest on such moneys, indebtedness and bonds have been paid in full, or when deposits in the special fund or funds created under this chapter are sufficient to pay such principal and interest as they come due, and to fund reserves, if any, or any other obligations of the agency funded through revenue allocation proceeds shall be satisfied and the agency has determined no additional project costs need be funded through revenue allocation financing, the allocation of revenues under section 50-2908, Idaho Code, shall thereupon cease; any moneys in such fund or funds in excess of the amount necessary to pay such principal and interest shall be distributed to the affected taxing districts in which the revenue allocation area is located in the same manner and proportion as the most recent distribution to the affected taxing districts of the taxes on the taxable property located within the revenue allocation area; and the powers granted to the urban renewal agency under section 50-2909, Idaho Code,

shall thereupon terminate. [1988, ch. 210, § 9, p. 393; am. 2002, ch. 143, § 5, p. 394.]

50-2910. Bonds not general obligation of agency or municipality.

— Except to the extent of moneys deposited in a special fund or funds under this act and pledged to the payment of the principal of and interest on bonds or other obligations, the agency shall not be liable on any such bonds or other obligations. The bonds issued and other obligations incurred by any agency under this chapter shall not constitute a general obligation or debt of any municipality, the state or any of its political subdivisions. In no event shall such bonds or other obligations give rise to general obligation or liability of the agency, the municipality, the state, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers, or be payable out of any funds or properties other than the special fund or funds of the agency pledged therefor; and such bonds and other obligations shall so state on their face. Such bonds and other obligations shall not constitute an indebtedness or the pledging of faith and credit within the meaning of any constitutional or statutory debt limitation or restriction. [1988, ch. 210, § 10, p. 393.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

50-2911. Limitations on review. — (1) No direct or collateral action attacking or otherwise questioning the validity of any urban renewal plan, project or modification thereto (including one containing a revenue allocation provision), or the adoption or approval of such plan, project or modification, or any of the findings or determinations of the agency or the local governing body in connection with such plan, project or modification, shall be brought prior to the effective date of the ordinance adopting or modifying the plan. No direct or collateral action attacking or otherwise questioning the validity of bonds issued pursuant to section 50-2909, Idaho Code, shall be brought prior to the effective date of the resolution or ordinance authorizing such bonds.

(2) For a period of thirty (30) days after the effective date of the ordinance or resolution, any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding, or any bonds which may be authorized thereby, passed or adopted under the provisions of this chapter shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the effective date of the ordinance, resolution or proceeding, and after such time the validity, legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of the validity of any adopted plan or bonds issued pursuant to this chapter is not raised within thirty (30) days from the effective date of the ordinance,

resolution or proceeding issuing said bonds and fixing their terms, the authority of the plan, the authority adopting the plan, or the authority to issue the bonds, and the legality thereof, the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. [1988, ch. 210, § 11, p. 393; am. 1990, ch. 430, § 5, p. 1186.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 7 of S.L. 1990, ch. 430 declared an emergency. Approved April 12, 1990.

50-2912. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [1988, ch. 210, § 12, p. 393.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

CHAPTER 30

[RESERVED]

CHAPTER 31

COMMUNITY INFRASTRUCTURE DISTRICT ACT

SECTION.

- 50-3101. Purpose, relationship with other laws and short title.
- 50-3102. Definitions.
- 50-3103. Creation of district.
- 50-3104. District organization.
- 50-3105. District powers.
- 50-3106. Change in district boundaries — Amend general plan.
- 50-3107. Finances.
- 50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy.
- 50-3109. Special assessments — Bonds.
- 50-3110. Revenue bonds — Election.

SECTION.

- 50-3111. Terms of bonds.
- 50-3112. Notice and conduct of election.
- 50-3113. Cost of administration.
- 50-3114. Annual financial statements and estimates — Annual budget — Certification.
- 50-3115. Disclosure.
- 50-3116. Dissolution of district.
- 50-3117. Exemptions and exclusions.
- 50-3118. Limitation of liability.
- 50-3119. Appeal — Exclusive remedy — Conclusiveness.
- 50-3120. Consistency with state law.
- 50-3121. Severability.

50-3101. Purpose, relationship with other laws and short title. —

(1) The purpose of this chapter is:

- (a) To encourage the funding and construction of regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure;
- (b) To provide a means for the advance payment of development impact fees established in chapter 82, title 67, Idaho Code, and the community infrastructure that may be financed thereby; and

(c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself.

(2) Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter.

(3) A community infrastructure district may only be formed pursuant to this chapter by a city in the city's incorporated area, or by a county in an area contained within a city's comprehensive plan with the city's consent.

(4) A community infrastructure district may be formed only after (i) prior review and approval by the governing body of each county or city in which the district is proposed to be located of a petition requesting the formation of the district, and (ii) the necessary approvals for site development under the local land use planning act, sections 67-6501 et seq., Idaho Code, and the planning and zoning ordinances of each county and city in which the district is proposed to be located have been obtained; provided however, that where there will be phased development, approvals obtained for the first phase of site development shall be sufficient for the initial creation and organization of the district. The formation of a district pursuant to this chapter shall not prevent the exercise by a county, city or other political subdivision of any of its powers on the same basis as on all other land within its jurisdiction. Notwithstanding the formation of a district, the development of real property located within the district shall remain subject to the provisions of chapter 65, title 67, Idaho Code, and the applicable planning and zoning ordinances of the counties and cities in which the district is located. The formation of a district pursuant to this chapter shall not prevent the subsequent establishment of other districts or the improvement or assessment of land within the district by a county, city or other political subdivision.

(5) This chapter shall be known and cited as the "Community Infrastructure District Act." [I.C., § 50-3101, as added by 2008, ch. 410, § 1, p. 1140.]

STATUTORY NOTES

Prior Laws. — Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

50-3102. Definitions. — As used in this chapter, the following terms shall have the meanings as stated:

(1) "Assessment area" means real property within the boundaries of a community infrastructure district that is the subject of a specific special assessment as set forth in this chapter.

(2) "Community infrastructure" means improvements that directly or indirectly benefit the district. Community infrastructure excludes public improvements fronting individual single family residential lots. Community infrastructure includes planning, design, engineering, construction, acquisition or installation of such infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure, and incurring expenses incident to and reasonably necessary to carry out the

purposes of this chapter. Community infrastructure includes all public facilities as defined in section 67-8203(24), Idaho Code, and, to the extent not already included within the definition in section 67-8203(24), Idaho Code, the following:

- (a) Highways, parkways, expressways, interstates, or other such designation, interchanges, bridges, crossing structures, and related appurtenances;
- (b) Public parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;
- (c) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;
- (d) Public safety facilities;
- (e) Acquiring interests in real property for community infrastructure;
- (f) Financing costs related to the construction of items listed in this subsection; and
- (g) Impact fees.

(3) "Community infrastructure segment" means a separate or a discernible portion of a construction contract attributable to community infrastructure.

(4) "Debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support.

(5) "District" means a community infrastructure district formed pursuant to this chapter. A district shall only include contiguous property at the time of formation. Land that is connected by only a shoestring or strip of land which comprises a railroad or highway right-of-way shall not be considered contiguous for the purposes of this chapter. Subsequent to a district's formation, a district may include noncontiguous property but only as the same shall be specifically determined and authorized by the district board in its discretion and pursuant to section 50-3106[, Idaho Code].

(6) "District board" means the board of directors of the district.

(7) "District development agreement" means an agreement between a property owner or developer, the county or city, any other political subdivision of the state, and/or the district. A district development agreement shall be used to establish obligations of the parties to the agreement relating to district financing and development, including: intergovernmental agreements; the ultimate public ownership of the community infrastructure financed by the district; the understanding of the parties with regard to future annexations of property into the district; the total amount of bonds to be issued by the district and the property taxes and special assessments to be levied and imposed to repay the bonds and the provisions regarding the disbursement of bond proceeds; the financial assurances, if any, to be provided with respect to the bonds; impact and other fees imposed by governmental authorities, including credit, prepayment and/or reimbursement with respect thereto; and other matters relating to the community infrastructure, such as construction, acquisition, planning, design, inspection, ownership and control. A district development agreement shall be in

addition to and shall not supplant any development agreement entered into pursuant to section 67-6511A, Idaho Code, pursuant to which a governing body may require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel.

(8) “General plan” means the general plan described in section 50-3103(1), Idaho Code, as the plan may be amended from time to time.

(9) “Governing body” means the county commissioners or city council that by law is constituted as the governing body of the county or city in which the district is located. Reference in this chapter to “governing body or bodies” shall mean the governing body or bodies of each county and city in which the district is located.

(10) “Owner” means the person listed as the owner of real property within the district or a proposed district on the current property rolls in effect at the time that the action, proceeding, hearing or election has begun; provided however, that if a person listed on the property rolls is no longer the owner of real property within the district or a proposed district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner shall be deemed to be the owner for the purposes of this chapter.

(11) “Market value for assessment purposes” means the amount of the last preceding equalized assessment of all taxable property and excludes all property exempt from taxation pursuant to section 63-602G, Idaho Code, within the community infrastructure district on the tax rolls completed and available as of the date of approval in the district bond issuance.

(12) “Person” means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership, trust or other such entities as recognized by the state of Idaho. A “person in interest” is any person who is a qualified elector in the district, who is an owner of real property in the district or who is a real property taxpayer in the district.

(13) “Qualified elector” means a person who possesses all of the qualifications required of electors under the general laws of the state of Idaho and:

(a) Resides within the boundaries of a district or a proposed district and who is a qualified elector. For purposes of this chapter, such elector shall also be known as a “resident qualified elector”; or

(b) Is an owner of real property that is located within the district or a proposed district, who is not a resident qualified elector as set forth above. For purposes of this chapter, such elector shall also be known as an “owner qualified elector.”

(14) “Special assessment” means an assessment imposed upon real property located within an assessment area for a specific purpose and of a special benefit to the affected property, collected and enforced in the same manner as property taxes, that may be apportioned according to the direct or indirect special benefits conferred upon the affected property, as well as any or any combination of the following: acreage, square footage, front footage, the cost of providing community infrastructure for the affected property, or any other reasonable method as determined by the district board. [I.C., § 50-3102, as added by 2008, ch. 410, § 1, p. 1140.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (5) was added by the compiler to correct the statutory citation style.

50-3103. Creation of district. — (1) The process for the creation and organization of a community infrastructure district shall be initiated by a petition signed by not less than two-thirds (2/3) of the district residents or by all of the owners of all the lands located in the proposed district. The petition shall be filed with the clerk of the governing body in which the proposed district will be located. If the proposed district will be located within two (2) or more counties and/or cities, a petition conforming to the requirements of this section shall be filed with the clerk of each jurisdiction's governing body. The petition shall state the name of the proposed district and the purpose for which it is formed, state that the formation of the district shall entitle the district to impose special assessments, levy property taxes and impose fees or charges to pay the cost of providing services, and shall be accompanied by a map depicting the boundaries of the proposed district, a legal description of the proposed district and a copy of the proposed general plan. The general plan shall describe or identify the community infrastructure to be financed by the district, the locations of the infrastructure and the estimated cost thereof, the proposed financing methods and the anticipated special assessments, tax levies or other charges, the approvals obtained pursuant to section 50-3101(3) [(4)], Idaho Code, and may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan. The petition shall also include copies of any proposed district development agreement. The petition, together with all maps and other papers filed therewith, shall be open to public inspection in the office of the clerk in each county or city in which the petition is filed, during such business hours as the clerk may direct.

(2) Upon the filing of a petition, the governing body shall give notice of the filing of the petition and of the time and place set for a public hearing on the petition, which hearing shall be at a regular or special meeting held within not less than thirty (30) days nor more than ninety (90) days after the date of the filing of the petition. A notice of the time of the public hearing shall be published by the governing body twice, the first time not less than twelve (12) days prior to the hearing and the second time not less than five (5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the proposed district will be located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall state that a community infrastructure district is proposed to be formed, giving the proposed boundaries thereof, and that any person who is a resident of or a real property taxpayer within

the proposed district may, on the date fixed for the public hearing, appear and offer any testimony pertaining to the formation of the district and the proposed boundaries thereof. If the district will be located within two (2) or more counties and/or cities, the governing bodies of such counties and/or cities shall coordinate their efforts and shall either hold a public hearing in each county or city in which the proposed district will be located, or hold a single public meeting in such county or city as the governing bodies shall unanimously agree. The notice shall also state that any political subdivision of this state within whose jurisdiction the proposed district will be located, including, without limitation, a highway district, a school district, a fire district or an ambulance district, may, on the date fixed for the public hearing, appear and offer testimony pertaining to the formation of the district and the proposed boundaries thereof. After hearing and considering any and all of the testimony given, the governing body shall thereupon approve a resolution either denying the petition or granting the same and, if granting the same, shall fix and describe in the resolution the boundaries of the proposed district and order the formation of the same. A resolution granting the petition may also include the approval of any district development agreement that has been approved by the governing body in the process of considering and approving the formation of the district. The boards of county commissioners and/or the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Whenever a petition shall be filed as provided for in this section, the petitioner or petitioners shall deposit with each governing body a sum sufficient to defray the costs of publication and mailing of notice of the public hearing. In the event the district is formed, said petitioner or petitioners shall be entitled to be reimbursed such sum from the district, as a district formation cost related to the community infrastructure, from the district when moneys are available to the district. The amount required to be paid under this subsection shall be determined by each governing body and deposited before publication of the notice.

(4) The governing body may charge the petitioner or petitioners a reasonable fee for the governing body to retain outside advisors to assist the governing body in its consideration of the formation of the district. In the event the district is formed, the petitioner or petitioners shall be entitled to be reimbursed such fee from the district, as a district formation cost related to the community infrastructure, when moneys are available to the district. [I.C., § 50-3103, as added by 2008, ch. 410, § 1, p. 1143.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in subsection (1) was added by the compiler to correct the statutory reference.

50-3104. District organization. — (1) If the petition for formation of the district is granted, the district shall comply with the filing and recording requirements of section 63-215, Idaho Code, and shall also cause a copy of

the applicable resolution to be delivered to the county assessor of each county in which the district is located, cause a copy of the applicable resolution to be recorded with the county clerk in each county in which the district is located, and cause a copy of the applicable resolution to be filed with the state tax commission.

(2) Members of the governing body or bodies at the time of formation shall serve as the district board. If the district is located entirely within the boundaries of a city, three (3) members of the city council chosen by the city council shall serve as the district board. If the district is located entirely within the boundaries of a county and outside the boundaries of any city, the county commissioners of the county in which the district is located shall serve as the district board. If the district is located within the jurisdiction of more than one (1) governing body, two (2) members of each governing body shall be appointed by that governing body to serve on the district board and, in addition, the governing body within whose jurisdiction the largest land area of the district is located shall appoint another member from its governing body to serve as an additional member of the district board, so that the district board will always be comprised of an odd number of members. For purposes of determining which jurisdiction has such largest land area, the land area in the district that is within the incorporated city limits shall be considered as being the land area of the city, and shall not be considered as part of the land area of the county in which the city is located. If an area is added to the district pursuant to section 50-3106(2), Idaho Code, and such area is located in a city or county not already represented on the district board, or if the addition of such area changes the jurisdiction in which the largest land area of the district is located, the membership of the district board, at the time of addition of such area, shall be adjusted in conformity with the foregoing. If an area is deleted from the district pursuant to section 50-3106(1), Idaho Code, and, as a result, a county or city no longer has area within the district, or such deletion changes the jurisdiction in which the largest land area of the district is located, the membership of the district board, at the time of deletion of such area, shall be adjusted in conformity with the foregoing. If an area is annexed or deannexed by a city and, as a result, the jurisdiction of a county or city is changed, the membership of the district board at the time of such annexation or deannexation shall be adjusted in conformity with the foregoing. The boards of county commissioners and the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Within thirty (30) days after the date of the resolution ordering formation of the district, and annually thereafter, the district board shall meet and elect a chairman and vice-chairman to act as the officers of the district board. The district board shall, unless otherwise agreed to by a majority of the board, meet in the county or city within which the largest land area of the district is located. The district shall keep the following records, which shall be open to public inspection:

- (a) Minutes of all meetings of the district board;
- (b) All resolutions;

- (c) Accounts showing all moneys received and disbursed;
- (d) The annual budget; and
- (e) All other records required to be maintained by law.

(4) The district manager shall be the manager or equivalent of the city or county, the district treasurer shall be the treasurer of the city or county, the district clerk shall be the district clerk of the city or county, respectively, unless the district board engages an outside firm to perform the tasks of the district's manager, treasurer and clerk as well as other duties as may be prescribed by the district board.

(5) The district manager shall have charge and supervision of the daily operations of the district. The district manager may hire or otherwise employ and terminate the employment of such persons, including professional, supervisory and clerical employees, as may be necessary and authorized by the board.

(6) The treasurer of the district shall have such duties as the district board may prescribe, together with the duty to keep account with the district; to place to the credit of the district all moneys received by him or her from the collection of special assessments, taxes or from any other sources, and all other moneys belonging to the district, and to pay over all moneys belonging to the district on legally drawn warrants or orders of the district board.

(7) The clerk of the district shall have such duties as the district board may prescribe, together with the duty to conduct district elections and to prepare and distribute legal notices.

(8) The district shall be separate and apart from any county or city. The members of the district board, when serving in their official capacity as members of the district board, shall act on behalf of the district and not as members of a board of county commissioners or as members of a city council.

(9) The district board shall administer in a reasonable manner the implementation of the general plan.

(10) The district shall exist until dissolved pursuant to section 50-3116, Idaho Code. [I.C., § 50-3104, as added by 2008, ch. 410, § 1, p. 1144.]

STATUTORY NOTES

Cross References. — State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

50-3105. District powers. — (1) A district formed pursuant to this chapter, although a political subdivision of this state, is not a governmental entity of general purposes and powers, but is a special limited purposes district, with powers only as permitted under this chapter, which powers include the power to finance community infrastructure consistent with the general plan and, in implementing the general plan, to:

- (a) Enter into contracts and expend moneys for any community infrastructure purposes and/or district operations;
- (b) Enter into intergovernmental agreements as provided for in sections 67-2326 through 67-2333, Idaho Code;

- (c) Enter into district development agreements;
 - (d) Acquire interests in real property and personal property for community infrastructure, within or without the district, and sell, dedicate, lease or otherwise dispose of district property if the sale, dedication, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;
 - (e) Plan, design, engineer, acquire, construct and install community infrastructure, including acquiring, converting, renovating or improving existing facilities;
 - (f) Employ and establish and pay compensation for staff, counsel and consultants;
 - (g) Reimburse a county, city or other political subdivision of this state for staff and consultant services supplied by the county, city or other political subdivision;
 - (h) Accept gifts or grants and incur and repay loans for any community infrastructure;
 - (i) Enter into agreements with owners concerning the advance of money by owners for community infrastructure or the granting of real property by the owners for community infrastructure;
 - (j) Establish, impose and collect or cause to be collected special assessments on real property located within an assessment area of the district and, in conjunction with the imposition of such assessments, set and collect or cause to be collected administrative fees for community infrastructure;
 - (k) Levy property taxes on real property located within the district and, in conjunction with the levy of such taxes, set and collect or cause to be collected administrative fees for community infrastructure;
 - (l) Incur expenses of the district incident to and reasonably necessary to implement the general plan, and pay the same, including the financial, legal and administrative costs of the district;
 - (m) Borrow money and incur indebtedness and evidence the same by certificates, notes, bonds or debentures, and enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of its bonds;
 - (n) Use public easements and rights-of-way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights-of-way, whether in or out of the geographical limits of the district, county or city; and
 - (o) Sue and be sued and prosecute and defend, at law or in equity.
- (2) Community infrastructure other than personalty, may be located only in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof.

(3) An agreement pursuant to subsection (1) of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued, or from advances, fees and charges collected from other owners or users or those having a right to use any community

infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

(4) With respect to goods, services or construction to be paid for or financed pursuant to this chapter, the district, as a political subdivision of this state, shall comply with all applicable procurement statutes of this state, including section 67-2320, Idaho Code, and chapter 28, title 67, Idaho Code. [I.C., § 50-3105, as added by 2008, ch. 410, § 1, p. 1146.]

50-3106. Change in district boundaries — Amend general plan. —

(1) After district formation, an area may be deleted from the district only following notice and hearing in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board, and by voter approval by the qualified electors as provided in section 50-3112, Idaho Code. Lands within the district that are subject to the lien of property taxes, special assessments or other charges imposed pursuant to this chapter shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, assessments or charges.

(2) After district formation, an area may be added to the district upon adoption of a resolution of intention to do so by the district board and the approvals of all the owners of the lands to be added and the governing body of each county or city within which such lands are located, subject to notice, hearing and adoption of a resolution in the manner as required for the formation of a district.

(3) If an area is deleted or added under subsection (1) or (2) of this section, the district board shall attend to the recording and filing requirements set forth in section 63-215, Idaho Code, and shall also cause a copy of the applicable resolution to be delivered to the county assessor of each county in which the district is located, cause a copy of the applicable resolution to be recorded with the county clerk in each county in which the district is located, and cause a copy of the applicable resolution to be filed with the state tax commission.

(4) The district board, following notice and hearing in the manner prescribed for the formation hearing, may amend the general plan in any manner that it determines will not substantially reduce the benefits to be received by any land within the district from the community infrastructure upon completion of the work to be performed under the general plan. No election shall be required for the purposes of this subsection. [I.C., § 50-3106, as added by 2008, ch. 410, § 1, p. 1147.]

STATUTORY NOTES

Cross References. — State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

50-3107. Finances. — (1) Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter.

(2) Community infrastructure to be financed or acquired, or publicly or privately constructed pursuant to this chapter shall be subject to the required bidding procedures for any Idaho public agency.

(3) Community infrastructure shown in the general plan may be financed from the following sources of revenue:

- (a) Proceeds received from the sale of bonds of the district;
- (b) Moneys of a county or city contributed to the district;
- (c) Property taxes or special assessments;
- (d) State or federal grants or contributions;
- (e) Private contributions;
- (f) User, landowner and other fees and charges;
- (g) Proceeds of loans or advances; and
- (h) Any other moneys available to the district by law.

(4) The amount of indebtedness evidenced by general obligation bonds issued pursuant to section 50-3108, Idaho Code, special assessment bonds issued pursuant to section 50-3109, Idaho Code, and revenue bonds issued pursuant to section 50-3110, Idaho Code, shall not exceed the estimated cost of the community infrastructure to be financed with such bonds, plus all costs connected with the issuance and sale of such bonds, including formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding principal amount of general obligation bonds and other indebtedness for which the full faith and credit of the district are pledged shall not affect the general obligation bonding capacity of any county or city in which the district is located.

(5) Bonds issued by a district shall not be a general obligation of this state or any political subdivision thereof, including any county or city in which the district is located and shall not pledge the full faith and credit of this state or any political subdivision thereof, including any county or city in which the district is located. [I.C., § 50-3107, as added by 2008, ch. 410, § 1, p. 1148.]

STATUTORY NOTES

Cross References. — Purchasing by political subdivisions, § 67-2801 et seq.

50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy. — (1) After district formation, whenever the district board shall deem it advisable to issue general obligation bonds of the district, the district board shall provide therefor by resolution, which resolution shall specify and set forth the community infrastructure and other costs and expenses approved by the district board consistent with the general plan to be financed with the bonds, and make provision for the collection of an annual tax sufficient to pay the interest on the bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof as required by the constitution and laws of the state of Idaho.

(2) The resolution shall also provide for holding an election, held in compliance with section 50-3112, Idaho Code, to submit to the qualified electors of the district the question of authorizing the district to issue

general obligation bonds of the district to provide money for said community infrastructure consistent with the general plan. The ballot used in such election shall be in form substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Resolution No. ...," and "Against issuing bonds to the amount of dollars for the purpose stated in Resolution No. ...".

(3) If two-thirds (2/3) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without the further vote of the qualified electors, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases; provided however, that before any issuance of the bonds, including issuance in series or divisions and, in addition to such other determinations made by the district board as it may deem reasonable and prudent, the district board shall also determine whether reasonable financial assurance for the payment of the debt service on the bonds through additional collateral, payment guarantee or otherwise shall be required from a developer. The developer shall be consulted and shall be given a reasonable period of time within which to appear, either in person or in writing, and respond to any proposed financial assurance. If, following such developer's response, the district board determines that reasonable financial assurance shall be required, the district board shall specify the type and amount of the financial assurance required in its resolution.

(4) In no event shall the aggregate outstanding principal amount of general obligation bonds and any other indebtedness for which the full faith and credit of the district are pledged exceed twelve percent (12%) of the actual or adjusted market value for assessment purposes on all taxable real property within the district as such valuation existed on December 31 of the previous year.

(5) After the bonds are issued, the district shall enter in its minutes a record of the bonds sold and their number and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Bond proceeds received by the district shall be held in a segregated account and shall be disbursed therefrom only for:

(a) The payment of community infrastructure and/or community infrastructure segments approved by the district board and actually completed; or

(b) For the purpose of reimbursing actually paid expenditures relating to community infrastructure as approved by the district board; provided however, that lien releases with respect to the payment made must be obtained from the underlying providers of labor, work, services or materials as a condition to such payment; or

(c) For the payment or reimbursement of governmentally imposed impact fees as approved by the district board.

(7) Completion of community infrastructure may be phased and payment made pursuant to a draw schedule. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within that time.

(8) Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board shall levy a tax upon all taxable real property within the district, sufficient, together with any money from the sources described in section 50-3107(3), Idaho Code, to pay debt service on the bonds when due. The levy shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located the certification required under section 50-3114, Idaho Code. Such tax levied shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. Moneys derived from the levy of property taxes to pay the debt service on the bonds shall be kept separately from other funds of the district. A district's levy of property taxes shall constitute a lien on all taxable real property within the district.

(9) The district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by this section. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided that the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded. [I.C., § 50-3108, as added by 2008, ch. 410, § 1, p. 1148.]

50-3109. Special assessments — Bonds. — (1) After district formation, upon the submission of a petition signed by all the owners of all the lands located in a proposed assessment area, or whenever the district board shall deem it advisable, the district board shall adopt a resolution ordering that a hearing be held to determine whether a special assessment should be imposed and special assessment bonds be issued to provide money for community infrastructure consistent with the general plan and the exercise by the district board of any of its powers under section 50-3105, Idaho Code.

(2) Notice of the hearing shall be posted in three (3) public places within the boundaries of the district not less than thirty (30) days before the hearing. Notice of the hearing shall also be published twice, the first time not less than twelve (12) days prior to the hearing and the second time not

less than five (5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the district is located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall include the following:

- (a) A description of the real property to be included within the assessment area;
- (b) A description of the method by which the amount of the proposed special assessment will be determined for each class of real property to which the special assessment is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special assessment;
- (c) A description of the community infrastructure to be financed with special assessment bonds or revenues; and
- (d) A statement that any person affected by the proposed special assessment may object in writing or in person at the hearing.

(3) If, after the hearing, the district board finds that it will be for the best interest of the district and the real property within the assessment area that the aggregate fair market value of the real property within the assessment area, including the value of the community infrastructure to be financed or paid for with the special assessments, and the infrastructure for which performance bonds or other financial assurances have been received, is at least three (3) times the aggregate principal amount of the special assessment bonds as determined by an MAI appraisal in form and substance acceptable to the district board, the district board shall adopt a resolution approving the imposition of the special assessment and, also by resolution, shall prepare a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of real property assessed, showing the amount chargeable to each such lot or parcel, and finding that each such lot or parcel is benefited to the amount of assessment imposed thereon. Such resolution shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof imposed on each such lot or parcel. Special assessments may be prepaid and permanently satisfied in whole or in part at any point in time. Prepayment of special assessments shall be paid in cash to the district in the following manner: (i) the interest on such portion to the next date special assessment bonds may be redeemed, plus (ii) the unpaid principal amount of such portion rounded up to the next highest multiple of one thousand dollars (\$1,000), plus (iii) any premium due on such redemption date with respect to such portion, plus (iv) any administrative or other fees charged by the district with respect thereto, less (v) the amount by which any reserve fund associated with the special assessment may be reduced on the redemption date as a result of such prepayment.

(4) Special assessment bonds approved at the hearing shall be issued in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without further hearing, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within such time.

(5) After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board shall impose a special assessment upon the real property within the assessment area of the district that will be subject to the special assessment sufficient, together with any moneys from the sources described in section 50-3107(3), Idaho Code, to pay debt service on the bonds when due, in addition to reasonable costs associated with the collection of the special assessment payments. The special assessment shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located, the certification required under section 50-3114, Idaho Code. Such special assessment shall then be collected and accounted for at the time and in the form and manner as property taxes are collected and accounted for under the laws of this state. Moneys derived from the imposition of the special assessment to pay the debt service on the bonds shall be kept separately from other moneys of the district.

(7) Special assessments against privately owned residential property shall be subject to the following provisions:

(a) The maximum amount of any special assessment that may be imposed shall not be increased over time by any amount exceeding two percent (2%) per year, up to a maximum of ten percent (10%);

(b) The special assessment shall be imposed for a specified time period, after which no further special assessment shall be imposed and collected; and

(c) Subject to the applicable laws of this state, nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special assessment imposed upon a parcel whose size or use is changed. A change in the amount of a special assessment imposed upon a parcel due to a change in its size or use shall not require notice and hearing, if the method for changing the amount of special assessment was approved at the hearing approving the special assessment and was described in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special assessment.

(8) A district's imposition of a special assessment shall constitute a lien on the real property within the assessment area subject to the special assessment, including real property acquired by the state or its political subdivisions after the imposition of the special assessment, which shall be effective during the period in which the special assessment is imposed and shall have a priority coequal to the lien of real property taxes. A special assessment shall be subject to foreclosure by the district in the same manner as real property tax liens under the laws of this state, provided that a special assessment shall be subject to foreclosure at any time after thirty (30) days following written notice of delinquency to the owner of the real property to which the delinquency applies. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special assessment shall be deposited in the special bond fund for payment of any obligations secured thereby.

(9) No holder of special assessment bonds issued pursuant to this chapter may compel any exercise of the taxing power of the district, county or city to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to this chapter are not a debt of the state of Idaho or any political subdivision thereof including the district, county or city, nor is the payment of special assessment bonds enforceable out of any moneys other than the revenue pledged to the payment of the bonds.

(10) Subject to the provisions of this section, a district may issue special assessment bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases, and payment may be made pursuant to a draw schedule.

(11) The district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized in this chapter. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded. [I.C., § 50-3109, as added by 2008, ch. 410, § 1, p. 1150.]

50-3110. Revenue bonds — Election. — (1) Subject to section 3, article VIII, of the constitution of the state of Idaho, after district formation, whenever the district board shall deem it advisable to issue revenue bonds of the district, the district board shall provide therefor by resolution, which resolution shall specify and set forth the community infrastructure consistent with the general plan to be financed with such bonds.

(2) The resolution shall also provide for holding an election, held in compliance with section 50-3112, Idaho Code, to submit to the qualified electors of the district the question of authorizing the district to issue

revenue bonds of the district to provide moneys for such community infrastructure consistent with the general plan.

(3) Except as otherwise specifically set forth in this section, the provisions of the water and sewer district revenue bond act codified in chapter 41, title 42, Idaho Code, shall apply with respect to the issuance of revenue bonds and refunding bonds under this section in substantially the same manner as if the district were a water and/or sewer district issuing bonds pursuant to the water and sewer district revenue bond act, and the district board shall conduct itself in the issuance of revenue bonds in substantially the same manner as the commissioners of a district under the water and sewer district revenue bond act.

(4) If the revenue bonds are approved at the election, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and such bonds shall be issued and sold in the manner provided by the laws of the state of Idaho.

(5) After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Money derived from the collection of revenues pledged to pay the debt service on the bonds shall be kept separately from other moneys of the district.

(7) No holder of revenue bonds issued pursuant to this chapter may compel any exercise of the taxing power of the district, county or city to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to this chapter are not a debt of the state or any political subdivision thereof, including any county or city in which the district is located, nor are they the debt of the district, other than with respect to the revenue pledged to the payment of the bonds. The payment of revenue bonds is not enforceable out of any money other than the revenue pledged to the payment of the bonds.

(8) Subject to the provisions of this section, a district may issue revenue bonds at such times and in such amounts as the district deems appropriate to carry out a project in phases.

(9) The district may issue and sell refunding bonds to refund revenue bonds of the district authorized by this section. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded. [I.C., § 50-3110, as added by 2008, ch. 410, § 1, p. 1153.]

50-3111. Terms of bonds. — For any bonds issued under this chapter, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty (30) years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds, up to the aggregate authorized principal amount thereof, may be issued in whole or divided into series, and by supplementary resolution adopted from time to time by the district board, the district may issue any remaining principal amount of the bonds in one (1) or more subsequent divisions. No election shall be required in connection with the issuance of any remaining principal amount of the bonds in a subsequent division. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending that use, the proceeds may be invested as determined by the district board. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper. The bonds may be payable from any combination of taxes or revenues of the types described in sections 50-3108, 50-3109 and 50-3110, Idaho Code. [I.C., § 50-3111, as added by 2008, ch. 410, § 1, p. 1154.]

50-3112. Notice and conduct of election. — (1) Any election pursuant to this chapter shall be a nonpartisan election, and in regard to election dates, shall be held in compliance with section 34-106, Idaho Code, or section 50-429, Idaho Code. Except as otherwise specifically set forth in this section, the district board shall cause the election to be held and conducted in the same manner prescribed by law for the holding of general elections in this state, including chapter 14, title 34, Idaho Code, and shall call the election by posting notices in three (3) public places within the boundaries of the district not less than thirty (30) days before the election. Notice shall also be published twice, the first time not less than twelve (12) days prior to the election and the second time not less than five (5) days prior to the election, in a newspaper of general circulation in each county or city in which the proposed district is located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall state:

- (a) The place of holding the election;
- (b) Subject to section 34-1409, Idaho Code, the hours during the day in which the polls will be open;

(c) If the election is a bond election, whether the bonds are general obligation bonds or revenue bonds, the total principal amount of bonds to be authorized, whether the bonds will be issued in series, the maximum rate of interest to be paid on the bonds and the maximum term of the bonds, not exceeding thirty (30) years;

(d) If the election is an election to change or eliminate an existing tax, the maximum tax amount to be imposed as a result of the change or elimination;

(e) The purposes for which property taxes levied and revenues raised will be used, including a description of the community infrastructure to be financed with tax revenues, district revenues or bond proceeds;

(f) That the imposition of property taxes will result in a lien for the payment thereof on real property within the district; and

(g) That a general plan is on file with the county clerk of each county in which the district is located.

(2) The district board shall determine the date of the election and the polling place or places for the election. The district board may establish, change, and consolidate election precincts within the district, as it deems necessary and appropriate, and shall define precinct boundaries.

(3) Subject to sections 50-3102(10) and 50-3102(13), Idaho Code, the current property rolls for the district and current voter lists in effect at the time that the election has begun shall be used to determine the qualified electors. If the district includes land lying partly in and partly out of any precinct, the voter lists may contain the names of all electors in the precinct, and the precinct boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a qualified elector.

(4) If the district is to be located within two (2) or more counties and/or cities, the election shall be held on the same day in each jurisdiction.

(5) The ballot material provided to each voter shall include:

(a) For an election concerning the issuance of bonds, an impartial description of the bonds to be issued and an impartial description of the property taxes to be imposed; the method of apportionment, collection and enforcement and other details sufficient to enable each qualified elector to reasonably estimate the amount of tax he or she will be obligated to pay; and a statement that the issuance of the bonds and the imposition of property taxes is for the provision of certain, but not necessarily all, community infrastructure that may be needed or desirable within the district, and that other taxes or assessments by other governmental entities may be presented for approval by qualified electors; and

(b) For an election to change an existing maximum tax or eliminate an existing tax, an impartial description of the change or elimination.

(6) Within ten (10) days after an election, the district board shall meet and canvass the returns, and declare the results thereof. At least a two-thirds ($\frac{2}{3}$) majority of the votes cast at the election shall be required for issuing bonds or changing an existing tax. The canvass may be continued for an additional period not to exceed thirty (30) days at the election of the district board for the purpose of completing the canvass. Failure of a required majority to vote in favor of the matter submitted shall not

prejudice the submission of the same or similar matters at a later election. The canvass of any general obligation bond election shall be filed and recorded in each county in which the district is located.

(7) In any election held pursuant to this chapter, every voter may vote at any election held pursuant to this chapter, but shall be entitled to cast votes, as follows: (i) each resident qualified elector shall be entitled to one (1) vote; and (ii) each owner qualified elector shall be entitled to one (1) vote. An owner qualified elector shall not be entitled to an additional vote as a result of also being a resident of the district. When record title is held in more than one (1) name, the owners shall file with the clerk of the district at or prior to the election a designation in writing, of which one of the owners shall be deemed the owner for purposes of voting.

(8) In conducting an election, the polling official may require evidence of ownership of property and designation of the power to exercise the vote of any owner consistent with the provisions of this section and section 50-3102(10), Idaho Code. [I.C., § 50-3112, as added by 2008, ch. 410, § 1, p. 1155.]

50-3113. Cost of administration. — Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board may levy a tax upon all taxable real property within the district of up to one-hundredth of one percent (.01%) of the market value for assessment purposes on all taxable real property within the district, to be used only to reimburse or defray the administrative expenses of the district pursuant to a district development agreement. No election shall be required. The levy shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located, the certification required under section 50-3114, Idaho Code. Such tax shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. [I.C., § 50-3113, as added by 2008, ch. 410, § 1, p. 1157.]

50-3114. Annual financial statements and estimates — Annual budget — Certification. — (1) When levying property taxes or imposing special assessments, and prior to certification of same to the county commissioners, the district board shall make annual statements and estimates of the administrative expenses of the district, the costs of community infrastructure to be financed by property taxes and special assessments and the amount of all other expenditures for community infrastructure proposed to be paid from property taxes and special assessments and of the amount to be raised to pay general obligation bonds and special assessment bonds of the district, all of which shall be provided for by the levy, imposition and collection of property taxes and special assessments. The annual estimates prepared by the district board shall include an amount determined by the district board, in consultation with the county tax collector, to defray the costs imposed upon the county tax collector's

office for any additional administrative services that will be required in the collection of and accounting for such district property taxes and special assessments. Such additional costs shall be for those services not otherwise included in the general tax collection and accounting services already provided by the county tax collector's office and otherwise paid for by property tax revenues, and shall be reasonably related to, but shall not exceed, the actual cost of the additional administrative services provided. The district board shall file the annual statements and estimates with the district clerk and, not later than the time required by section 63-802A, Idaho Code, shall set and notify the county clerk of the date and location set for the annual budget hearing of the district. The district board shall publish a notice of the filing of the estimate, shall hold a public hearing on the portion of the estimate not relating to debt service on general obligation bonds and special assessment bonds and shall adopt a budget. Notice of the budget hearing shall be posted at least ten (10) days prior to the date of said meeting in at least one (1) conspicuous place within the district to be determined by the district board; a copy of the notice shall also be published in a newspaper of general circulation in the county or city in which the proposed district is located, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of the hearing shall be specified in said notice, as well as the place where the budget may be examined prior to the hearing. A full and complete copy of the proposed budget shall be published with and as a part of the publication of the notice of hearing. The budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this section provided, at such place and during such business hours as the district board may direct. A quorum of the district board shall attend the hearing and explain the proposed budget and hear any and all objections to the proposed budget. The district board at the time of the certification required under subsection (2) of this section shall file with the board of county commissioners in each county in which the district is located a certified copy of the annual budget as previously prepared, approved and adopted.

(2) The district board, having determined the total amount required from property taxes and special assessments to raise the amount of money fixed by the annual budget, including the amount of money needed to satisfy annual bond payments, shall cause the amount of money so determined to be certified in dollars to the board of county commissioners in each county in which the district is located not later than the time required for certification under section 63-803, Idaho Code. Said certification shall list separately each tax levy and special assessment if more than one (1), and the purpose of each thereof, and shall otherwise comply with the requirements of section 63-803, Idaho Code.

(3) Following such certification to the county commissioners, district property taxes and special assessments shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. Except as specifically provided otherwise in this chapter, all statutes of this state relating to the levy, imposition, collection, settlement and payment of property taxes,

including the collection of delinquent taxes and sale of property for nonpayment of taxes and special assessments, apply to district property taxes and special assessments. [I.C., § 50-3114, as added by 2008, ch. 410, § 1, p. 1157.]

50-3115. Disclosure. — (1) The district board shall record with the county clerk in each county in which the district is located, upon the records of each parcel of real property within the district that will be encumbered with any future general obligation bond or special assessment bond repayment liability, a notice setting forth:

- (a) The current obligation of a property owner within the district with respect to any bond repayment liability;
- (b) That the obligation to retire the bonds will be the responsibility of any property owner in the district through the payment of real property taxes and special assessments collected by the county treasurer in addition to all other property tax payments;
- (c) The estimated maximum tax or special assessment rate upon the parcel for bond repayment;
- (d) Whether the tax or special assessment rate is to be maintained at any level by means of any developer agreement with the district; and
- (e) That in the event of the failure to maintain the tax rate, the tax rate on a parcel will increase, as needed, to provide for bond repayment.

(2) Such notice may be separately recorded or included in a recorded district development agreement. The governing body, in its resolution approving formation of the district, shall require that a form disclosure, consistent with the foregoing, be signed and acknowledged by any purchaser of land within the district prior to purchase. The form disclosure shall be entitled “CID TAX AND SPECIAL ASSESSMENT DISCLOSURE NOTICE” and shall specifically and conspicuously set forth “YOU ARE PURCHASING REAL PROPERTY THAT IS INCLUDED WITHIN THE BOUNDARIES OF A COMMUNITY INFRASTRUCTURE DISTRICT.” Further, the notice shall set forth such other notifications as determined appropriate by the district board that shall fully and fairly disclose the property owner’s general obligation bond and special assessment repayment liability with examples provided. [I.C., § 50-3115, as added by 2008, ch. 410, § 1, p. 1158.]

50-3116. Dissolution of district. — (1) The district shall be dissolved by the district board by a resolution of the district board upon a determination that each of the following conditions exist:

- (a) All community infrastructure owned by the district has been, or provision has been made for all community infrastructure to be conveyed, either to the state of Idaho or to a political subdivision thereof, which shall include a county or city in which the district is located, or to a public district or other authority authorized by the laws of this state to own such community infrastructure;
- (b) The district has no outstanding bond obligations; and
- (c) All obligations of the district pursuant to any contracts or agreements entered into by the district have been satisfied.

(2) All property within the district that is subject to the lien of district taxes or special assessments shall remain subject to the lien for the payment of general obligation bonds or special assessment bonds, as the case may be, notwithstanding dissolution of the district. The district shall not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds, either at maturity or prior redemption, has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

(3) The district shall send a notice of dissolution to the governing body or bodies, the county assessor of each county in which the district is located, and the state tax commission. The district shall also record a notice of dissolution with the county clerk in each county in which the district is located.

(4) Subject to the foregoing provisions of this section, if upon dissolution of the district there remain any excess moneys of the district, the district board shall, by resolution, cause the same to be fairly distributed among the current taxpayers of the district. If, as determined in the sole discretion of the district board, the amount to be distributed is de minimis, or the administrative cost of distribution is prohibitive, such remaining moneys shall be paid to the county treasurer of each county in which the district is located to be distributed among the cities and counties in which the district is located in proportion to which said cities and counties receive property tax revenues generally. [I.C., § 50-3116, as added by 2008, ch. 410, § 1, p. 1159.]

50-3117. Exemptions and exclusions. — (1) All public utilities, as defined in section 61-129, Idaho Code, shall be exempt from taxation under this chapter.

(2) No railroad right-of-way may be included within a community infrastructure district without the consent of the railroad.

(3) No personal property within a community infrastructure district shall be subject to taxation under this chapter. [I.C., § 50-3117, as added by 2008, ch. 410, § 1, p. 1159.]

50-3118. Limitation of liability. — Neither any member of the district board nor any person acting on behalf of the district, while acting within the scope of his or her authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority. [I.C., § 50-3118, as added by 2008, ch. 410, § 1, p. 1160.]

50-3119. Appeal — Exclusive remedy — Conclusiveness. — Any person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district, including, with respect to any tax levy, special assessment or bond, may, within thirty (30) days after such final decision, seek judicial review by filing a written notice of appeal with the clerk of the district and with the clerk of the

district court for the judicial district in which a majority of the land area of the district is located. After said thirty (30) day period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed. With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. [I.C., § 50-3119, as added by 2008, ch. 410, § 1, p. 1160.]

50-3120. Consistency with state law. — (1) A community infrastructure district shall develop community infrastructure consistent with the general plan and in compliance with the requirements of chapter 13, title 50, Idaho Code, and chapter 65, title 67, Idaho Code.

(2) A community infrastructure district shall be deemed to be of the same nature and afforded the same treatment as a local improvement district for purposes of application of section 58-336, Idaho Code, relating to lands benefitting by such district; section 67-8209, Idaho Code, authorizing development impact fee credits; and section 67-8214, Idaho Code, providing that other powers and rights of governmental entities are not affected. [I.C., § 50-3120, as added by 2008, ch. 410, § 1, p. 1160.]

50-3121. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision or the application of the provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter. [I.C., § 50-3121, as added by 2008, ch. 410, § 1, p. 1160.]

TITLE 51

NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

CHAPTER

1. IDAHO NOTARY PUBLIC ACT, §§ 51-101 — 51-123.

CHAPTER

2. COMMISSIONERS OF DEEDS. [REPEALED.]

CHAPTER 1

IDAHO NOTARY PUBLIC ACT

SECTION.

51-101. Short title.
51-102. Definitions.
51-103. Power of appointment — Term — Reappointment.
51-103A. [Repealed.]
51-104. Qualification for appointment.
51-105. Appointment procedure — Oath.
51-106. Seal.
51-107. Powers and jurisdiction.
51-108. Disqualifying interests.
51-109. Forms for notarial acts.
51-110. Notary fee.
51-111. Duties.
51-112. Official misconduct.

SECTION.

51-113. Grounds for removal.
51-114. Removal procedure.
51-115. Resignation or death.
51-116. Cancellation procedure.
51-117. Conditions impairing validity of notarial act.
51-118. Civil liability of notary public and employer.
51-119. Criminal penalties.
51-120. Notary handbook.
51-121. Filing fees.
51-122. Severability.
51-123. Transition.

51-101. Short title. — This chapter may be cited as the “Idaho Notary Public Act.” [I.C., § 51-101, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Prior Laws. — Former §§ 51-101 to 51-112 were repealed by S.L. 1984, ch. 259, § 1, effective January 1, 1985;

51-101. (1867, p. 47, § 1; 1873, p. 59, § 1; R.S., § 285; reen. R.C., § 231; am. 1915, ch. 45, § 1, p. 131; reen. C.L., § 231; C.S., § 208; I.C.A., § 50-101; am. 1974, ch. 5, § 2, p. 23).

51-102. (1867, p. 47, § 2; 1868, p. 99, § 1; R.S., § 286; am. R.C., § 232; am. 1915, ch. 45, § 2, p. 131; reen. C.L., § 232; C.S., § 209; I.C.A., § 50-102; am. 1980, ch. 157, § 1, p. 332).

51-103. (1867, p. 47, § 3; 1868, p. 99, § 2; R.S., § 287; am. R.C., § 233; reen. C.L., § 233; C.S., § 210; am. 1921, ch. 225, § 1, p. 513; I.C.A., § 50-103; am. 1949, ch. 283, § 3, p. 582).

51-103A. (I.C., § 51-103A, as added by 1980, ch. 157, § 2, p. 332).

51-104. (1867, p. 47, §§ 4-11; R.S., § 289; am. R.C., § 236; am. 1915, ch. 45, § 3, p. 131; am. C.L., § 236; C.S., § 211; I.C.A., § 50-104; am. 1979, ch. 203, § 1, p. 584).

51-105. (1867, p. 47, § 12; R.S., § 290; reen.

R.C. & C.L., § 237; C.S., § 212; I.C.A., § 50-105).

51-106. (1867, p. 47, § 14; R.S., § 291; reen. R.C., § 238; am. 1915, ch. 45, § 4, p. 131; reen. C.L., § 238; C.S., § 213; I.C.A., § 50-106).

51-107. (1867, p. 47, § 16; R.S., § 292; reen. R.C. & C.L., § 239; C.S., § 214; I.C.A., § 50-107).

51-108. (R.S., § 293; am. 1907, p. 156, § 1; reen. R.C. & C.L., § 240; C.S., § 215; I.C.A., § 50-108).

51-109. (R.S., § 294; am. R.C., § 241; reen. C.L., § 241; C.S., § 216; I.C.A., § 50-109).

51-110. (1867, p. 47, § 13; R.S., § 295; reen. R.C. & C.L., § 242; C.S., § 217; I.C.A., § 50-110).

51-111. (1915, ch. 45, § 6, p. 131; compiled and reen. C.L., § 242a; C.S., § 218; I.C.A., § 50-111).

51-112. (1921, ch. 163, § 1, p. 360; I.C.A., § 50-112; am. 1945, ch. 68, p. 86; am. 1969, ch. 148, § 1, p. 473).

Former §§ 51-106, 51-109 and 51-111 were previously repealed by S.L. 1980, ch. 157, § 3.

JUDICIAL DECISIONS

Cited in: Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc., 107 Idaho 711, 692 P.2d 355 (1984).

51-102. Definitions. — As used in this chapter:

- (1) The masculine gender includes the feminine.
- (2) "Notarial act" means any official act performed by a notary public under provisions of section 51-107, Idaho Code.
- (3) "Resident" means a natural person who has fixed his habitation in the state of Idaho and who, whenever absent, intends to return to that place of habitation in Idaho.
- (4) "Serious crime" includes any felony and any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, the unauthorized practice of law, deceit, bribery, extortion, misappropriation, theft, or an attempt, a conspiracy or the solicitation of another to commit a serious crime.
- (5) "Affidavit" means a declaration in writing, under oath, and sworn to or affirmed by the declarant before a person authorized to administer oaths.
- (6) "Verification" means an affidavit of the truth of the facts stated in the instrument to which it relates. [I.C., § 51-102, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 51-102 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

JUDICIAL DECISIONS

Cited in: State of Alaska ex rel. Sweat v. Hansen, 116 Idaho 927, 782 P.2d 50 (Ct. App. 1989).

51-103. Power of appointment — Term — Reappointment. —

- (1) The secretary of state shall appoint in and for the state of Idaho as many notaries public as he shall deem necessary.
- (2) Each notary public so appointed shall serve for a term of six (6) years except as otherwise provided in this chapter.
- (3) A notary public may be reappointed upon submission of a new application not earlier than ninety (90) days prior to the expiration of his term. [I.C., § 51-103, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 51-103 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

51-103A. Change of name or address — Fee. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised I.C., § 51-103A, as added by 1980, ch. 157, § 2, p. 332, was repealed by S.L. 1984, ch. 259, § 1.

51-104. Qualification for appointment. — Each person appointed and commissioned as a notary public:

- (1) Shall be at least eighteen (18) years of age;
- (2) Shall be a resident of the state of Idaho or a nonresident who is employed in or doing business in the state of Idaho;
- (3) Must be able to read and write the English language; and
- (4) Must not have been removed from the office of notary public for official misconduct nor have been convicted of a serious crime as defined in section 51-102, Idaho Code, within the ten (10) year period immediately preceding his appointment nor be serving a sentence for conviction of a serious crime, without regard to when convicted. [I.C., § 51-104, as added by 1984, ch. 259, § 2, p. 620; am. 1992, ch. 234, § 1, p. 700.]

STATUTORY NOTES

Prior Laws. — Former § 51-104 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

51-105. Appointment procedure — Oath. — (1) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application shall include such information as the secretary of state shall deem proper and shall include that the applicant:

- (a) Is at least eighteen (18) years of age;
- (b) Is a resident of the state of Idaho or a nonresident who is employed in or doing business in the state of Idaho;
- (c) Is able to read and write the English language; and
- (d) Has not been convicted of a serious crime nor removed from office for official misconduct during the immediately preceding ten (10) year period.

The applicant shall also take the following oath, which shall appear on the application form:

"I,, solemnly swear (or affirm) that the answers to all questions in this application are true, complete and correct; that I have carefully read the notary laws of this State and I am familiar with their provisions; that I will uphold the Constitution of the United States and the Constitution and laws of the State of Idaho; and that I will faithfully perform, to the best of my ability, the duties of the office of notary public, and I do hereby voluntarily submit myself to the continuing jurisdiction of the courts of the state of Idaho and to the processes thereof."

The oath shall be signed and sworn to (or affirmed) by the applicant in the presence of a notary public or other person authorized to administer oaths in this state.

(2) Each person to be appointed a notary public shall execute and append to the application a bond to the state of Idaho in the amount of ten thousand dollars (\$10,000). The surety which provides the bond shall be:

(a) A bonding or surety company authorized to do business in this state; or

(b) The bureau of risk management for the state of Idaho if the applicant is regularly employed by the state and the commission is required in the scope of that employment. [I.C., § 51-105, as added by 1984, ch. 259, § 2, p. 620; am. 1992, ch. 234, § 2, p. 700; am. 1994, ch. 145, § 1, p. 324.]

STATUTORY NOTES

Prior Laws. — Former § 51-105 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

51-106. Seal. — (1) Each notary public whose current commission became effective prior to July 1, 1998, shall provide and keep an official seal which shall conform to one (1) of the following configurations:

(a) A seal embosser engraved with the words "Notary Public," the notary public's name, and the words "State of Idaho."

(b) A rubber stamp with a serrated or milled edge border in rectangular or circular form, which contains the same information required for the seal embosser.

(2) Each notary public whose current commission became effective on or after July 1, 1998, shall provide and keep an official seal which shall be a rubber stamp with a serrated or milled edge border in a rectangular or circular form, which includes the words "Notary Public," the notary public's name, the words "State of Idaho," and nothing more.

(3) The seal shall be impressed below or near the notary public's official signature on each notary certificate which he administers. [I.C., § 51-106, as added by 1984, ch. 259, § 2, p. 620; am. 1998, ch. 146, § 1, p. 516.]

STATUTORY NOTES

Prior Laws. — Former § 51-106 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

51-107. Powers and jurisdiction. — (1) Each notary public is empowered to:

(a) Take acknowledgments;

(b) Administer oaths and affirmations;

(c) Certify that a copy of an original document is a true copy thereof, only if a certified copy of such original cannot be obtained from an official custodian of such document;

(d) Certify affidavits (to include verifications) or depositions of witnesses;

(e) Certify the affixation of a signature by mark on an instrument presented for notarization if:

(i) The signer is unable to handwrite the signer's name;

- (ii) The mark is affixed in the presence of the notary in a manner which the notary can directly observe;
 - (iii) The notary writes below the mark the following: "Mark affixed by (printed name of signer by mark)."; and
 - (iv) The notary public notarizes the signature by mark through a certificate of acknowledgment or verification;
 - (f) A notary may sign the name of a person physically unable to sign or sign by mark on a document presented for notarization if:
 - (i) The person directs the notary to do so in the presence of a witness unaffected by the instrument;
 - (ii) The notary signs the person's name in the presence of the person and the witness;
 - (iii) The witness signs the instrument beside the signature;
 - (iv) The notary writes below the signature the following: "Signature affixed by notary in the presence of (name of person and witness)"; and
 - (v) The notary notarizes the signature through a certificate of acknowledgment or verification; and
 - (g) Perform such other acts as may be specifically permitted by law.
- (2) The powers of a notary public commissioned pursuant to the provisions of this chapter may be exercised anywhere within the state of Idaho and may be exercised outside the state only in connection with a deed or other writing to be admitted to record in the state of Idaho. [I.C., § 51-107, as added by 1984, ch. 259, § 2, p. 620; am. 2007, ch. 312, § 1, p. 880.]

STATUTORY NOTES

Prior Laws. — Former § 51-107 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

Amendments. — The 2007 amendment, by ch. 312, added subsections (1)(e) and (1)(f)

and redesignated former subsection (1)(e) as (1)(g).

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Legislative intent.
Signing blank certificate.
Taking of acknowledgment.

Legislative Intent.

The manifest intent of the legislature in former similar law requiring a notary public to execute a certificate of acknowledgment is to provide protection against the recording of false instruments; the sine qua non of this statutory requirement is the involvement of the notary, a public officer in a position of public trust. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Signing Blank Certificate.

A notary betrays the public trust when he signs a certificate of acknowledgment with

knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Taking of Acknowledgment.

In taking acknowledgments, a notary properly discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness,

"State of Idaho)
) ss.
 County of)

I,, a notary public, do hereby certify that on this day of,, personally appeared before me, who, being by me first duly sworn, declared that he is the of, that he signed the foregoing document as of the corporation, and that the statements therein contained are true.

..... (official signature and seal)"

(5) The witnessing and certificate of verification for a signature by mark shall be substantially in the following form:

"Mark:

Mark affixed by (name of signer by mark) in the presence of undersigned notary

"State of Idaho)
) ss.
 County of)

I,, a notary public, do hereby certify that on this day of,, personally appeared before me (name and signer by mark), who, being by me first duly sworn, declared that he made his mark on the foregoing instrument, and that the statements therein contained are true.

..... (official signature and seal)"

(6) The witnessing and certificate of verification for a signature by a person physically unable to sign or sign by mark on an instrument shall be substantially in the following form:

"Signature of person by notary:

Witness Signature:

Signature affixed by notary in the presence of (names and addresses of person and witness).

State of Idaho)
) ss.
 County of)

I,, a notary public, do hereby certify that on this day of,, personally appeared before me (name of person unable to sign or sign by mark), who, being by me first duly sworn, declared that he signed the foregoing instrument by directing the undersigned notary to sign the instrument for him, and that the statements therein contained are true.

..... (official signature and seal)"

(7) If a certified copy of a document cannot be obtained from any recorder or custodian of public documents, and if certification of a copy of the document by a notary public is otherwise permissible, a notary public may certify a copy of the document in substantially the following form:

"State of Idaho ()

) ss.

County of)

I,, a notary public, do certify that on,, I carefully compared the attached copy of (describe document) with the original. It is a complete and true copy of the original document."

..... (official signature and seal)

(8) On each notary certificate, the notary public shall immediately following his signature state the date of the expiration of his commission in substantially the following form:

"My commission expires on,"

[I.C., § 51-109, as added by 1984, ch. 259, § 2, p. 620; am. 2002, ch. 32, § 24, p. 46; am. 2007, ch. 312, § 2, p. 880.]

STATUTORY NOTES

Prior Laws. — Former § 51-109 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

Amendments. — The 2007 amendment, by ch. 312, added subsections (5) and (6) and

redesignated the other subsections accordingly.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted

JUDICIAL DECISIONS

Sufficiency of Affidavit.

Where plaintiff filed an "affidavit" in opposition to a motion for summary judgment, this document was only in partial affidavit form since it was not subscribed and sworn to as an oath or affirmation, as required of an affidavit pursuant to this section, but rather, the signature of plaintiff was merely acknowledged by a notary public in the manner required for the acknowledgment of signatures on deeds

for recording under § 55-710; accordingly, the facts stated in the "affidavit" were not under oath as required by I.R.C.P. 56(e). *Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990), cert. denied, 498 U.S. 1086, 111 S. Ct. 960, 112 L. Ed. 2d 1048 (1991).

Cited in: *Cornerstone Bldrs., Inc. v. McReynolds*, 136 Idaho 843, 41 P.3d 271 (Ct. App. 2001).

51-110. Notary fee. — (1) A notary public may, for any notarial act, charge a fee not to exceed two dollars (\$2.00).

(2) In addition to the fee, a notary public may be compensated for actual and reasonable expense of travel to a place where a notarial act is to be performed.

(3) An employer shall not require a notary public in his employment to surrender to him a fee, if charged, or any part thereof. An employer may, however, preclude such notary public from charging a fee for a notarial act performed in the scope of his employment. [I.C., § 51-110, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 51-110 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

51-111. Duties. — (1) Each notary public shall exercise reasonable care in the performance of his duties generally, and shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial act.

(2) Any notary public whose name or residence changes during his term of office shall within sixty (60) days after such change submit written notice thereof to the secretary of state. [I.C., § 51-111, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 1, p. 708.]

STATUTORY NOTES

Prior Laws. — Former § 51-111 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

RESEARCH REFERENCES

A.L.R. — Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in perfor-

mance of duties. 44 A.L.R.3d 1243.

Perjury conviction as affected by notary's nonobservance of formalities for administration of oath to affiant. 80 A.L.R.3d 278.

51-112. Official misconduct. — Official misconduct is the wrongful exercise of a power or the wrongful performance of a duty. In this context, wrongful shall mean unauthorized, unlawful, abusive, negligent, or reckless. Official misconduct by a notary public shall include, but not be limited to:

- (a) Engaging in any fraudulent or deceptive conduct which is related in any way to his capacity as a notary public;
- (b) Failure to exercise the required degree of care in identifying a person whose identity is an essential element of a notarial act;
- (c) Representing or implying by the use of his title that he has qualifications, powers, duties, rights, or privileges that by the law he does not possess;
- (d) Engaging in the unauthorized practice of law;
- (e) Charging a fee for a notarial act which is in excess of that provided by section 51-110, Idaho Code; or
- (f) Endorsing or promoting any product, service, contest or other offering if the notary public's title or seal is used in the endorsement or promotional statement. [I.C., § 51-112, as added by 1984, ch. 259, § 2, p. 620; am. 1994, ch. 145, § 2, p. 324.]

STATUTORY NOTES

Prior Laws. — Former § 51-112 was repealed effective January 1, 1985. See Prior Laws, § 51-101.

RESEARCH REFERENCES

A.L.R. — Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

Perjury conviction as affected by notary's nonobservance of formalities for administration of oath to affiant. 80 A.L.R.3d 278.

51-113. Grounds for removal. — A notary public may be removed from the office upon any of the following grounds:

(a) Conviction of a serious crime within the immediately preceding ten (10) year period;

(b) Any action which constitutes official misconduct;

(c) Any material misstatement of fact in his application for appointment as a notary public;

(d) Failure of a conservator or guardian to submit a timely resignation after a notary public becomes incompetent;

(e) Failure of a notary public to submit a timely resignation when he becomes disqualified by virtue of no longer: (1) being a citizen of the United States; or (2) being a resident of Idaho;

(f) Cancellation of the notary bond by the bonding or surety company; or

(g) Cancellation of the notary bond by the state of Idaho when the notary public's bond has been provided by the bureau of risk management of the state of Idaho and the notary's employment with the state is terminated. [I.C., § 51-113, as added by 1984, ch. 259, § 2, p. 620; am. 1994, ch. 145, § 3, p. 324.]

RESEARCH REFERENCES

A.L.R. — Measure of damages for false or incomplete certificate by notary public. 13 A.L.R.3d 1039.

Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

51-114. Removal procedure. — (1) If a notary public is convicted of a serious crime in any court of this state, the clerk of the court, if he knows that the convict is a notary public or upon the request of any person, shall forward to the secretary of state a certified copy of the judgment of conviction. If a notary public is convicted of a serious crime in a federal court or a court of another state, any person may obtain a certified copy of the judgment of conviction and forward it to the secretary of state. Upon receipt of a certified copy of a judgment of conviction of a serious crime in the preceding ten (10) year period, the secretary of state shall forthwith cancel the commission of the notary public.

(2) If in any civil or criminal case the court finds that a notary public has committed any act which constitutes official misconduct under section 51-112, Idaho Code, the clerk of the court, upon the request of any person, shall forward a certified copy of the findings of fact, or relevant extract therefrom, to the secretary of state. Upon receipt of the certified copy of the findings of fact or extract therefrom the secretary of state shall, if he finds that the act of the notary public as found by the court constitutes official misconduct, forthwith cancel the commission of the notary public.

(3) Upon receipt of proof on the public record of a material misstatement of fact in the application of a notary public, certified by the custodian of such record, the secretary of state shall forthwith cancel the commission of the notary public.

(4) If the conservator or guardian of a notary public who has been adjudged incompetent fails to submit a timely resignation as required by subsection (3) of section 51-115, Idaho Code, the clerk of the court which found the notary public to be incompetent shall, upon the request of any person, forward to the secretary of state a certified copy of the order adjudging the notary to be incompetent. Upon receipt of such order, the secretary of state shall forthwith cancel the commission of the notary public.

(5) If the secretary of state receives credible information that a notary public is no longer a resident of Idaho or employed in or doing business in the state of Idaho, the secretary of state shall send to the notary public at his last known address by certified return receipt mail a statement setting forth such information and a notice of opportunity to rebut. If the statement and notice cannot be delivered or if no rebuttal is received within forty-five (45) days after mailing the notice, the secretary of state shall cancel the commission of the notary public. If the statement is rebutted by statements which indicate that the notary public is not disqualified on residency business, or employment grounds, the secretary of state shall take no further action.

(6) A bonding or surety company, or in the case of a state employee, the bureau of risk management, shall file prompt written notice of cancellation of a notary's bond with the secretary of state who shall forthwith cancel the commission of the notary public. The cancellation of the bond shall be effective only upon receipt by the secretary of state of notice of cancellation. [I.C., § 51-114, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 2, p. 708; am. 1992, ch. 234, § 3, p. 700; am. 1994, ch. 145, § 4, p. 324.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1992, ch. 234 declared an emergency. Approved April 8, 1992.

51-115. Resignation or death. — (1) A notary public may voluntarily resign by mailing or delivering to the secretary of state a letter of resignation.

(2) Any notary public who becomes ineligible to hold such office for any reason shall within thirty (30) days thereafter resign by mailing or delivering to the secretary of state a letter of resignation.

(3) If a notary public becomes incompetent, his conservator or guardian shall within thirty (30) days after the finding of incompetency mail or deliver to the secretary of state a letter of resignation on behalf of the notary public.

(4) If a notary public dies in office, his personal representative shall within thirty (30) days thereafter mail or deliver to the secretary of state notice thereof.

(5) Upon receipt of a letter of resignation or notice of death, the secretary of state shall forthwith cancel the commission of the notary public. [I.C., § 51-115, as added by 1984, ch. 259, § 2, p. 620.]

51-116. Cancellation procedure. — Whenever the secretary of state is required by the provisions of sections 51-114 and 51-115, Idaho Code, to cancel the commission of a notary public, he shall:

- (a) Mark the notary public's record "cancelled" and append thereto the supporting document; and
- (b) Mail written notice to the resigned or removed notary public or to the conservator, guardian, or personal representative, as appropriate, instructing him to destroy the notary public commission and seal. [I.C., § 51-116, as added by 1984, ch. 259, § 2, p. 620.]

51-117. Conditions impairing validity of notarial act. — Without excluding other conditions which may impair the validity of a notarial act, the following conditions invalidate the notarial act:

- (a) Failure of the notary public to require a person whose acknowledgment is taken to personally appear before him;
- (b) Failure of the notary public to administer an oath or affirmation when the notary certificate indicates that he has administered it;
- (c) As to only the notary public who performs the notarial act and any party who shares the same beneficial interest in the transaction, the existence of a disqualifying interest. [I.C., § 51-117, as added by 1984, ch. 259, § 2, p. 620.]

RESEARCH REFERENCES

A.L.R. — Perjury conviction as affected by notary's nonobservance of formalities for administration of oath to affiant. 80 A.L.R.3d 278.

51-118. Civil liability of notary public and employer. — (1) A notary public shall be liable for all damages proximately caused by his official misconduct.

(2) The employer of a notary public shall be jointly and severally liable with such notary public for all damages proximately caused by the official misconduct of such notary public if:

- (a) The notary public was acting within the scope of his employment; and
- (b) The employer had actual knowledge of, or reasonably should have known of, the notary public's official misconduct. [I.C., § 51-118, as added by 1984, ch. 259, § 2, p. 620.]

RESEARCH REFERENCES

A.L.R. — Measure of damages for false or incomplete certificate by notary public. 13 A.L.R.3d 1039.

Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for

wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

Admissibility, in action against notary public, of evidence as to usual business practice of notary public of identifying persons seeking certificate of acknowledgment. 59 A.L.R.3d 1327.

51-119. Criminal penalties. — (1) Any notary public who knowingly and willfully commits an act of official misconduct under the provisions of section 51-112, Idaho Code, shall be guilty of a misdemeanor.

(2) Any employer of a notary public who willfully induces such notary public to commit an act of official misconduct under the provisions of section 51-112, Idaho Code, shall be guilty of a misdemeanor.

(3) Any person who shall willfully act as or otherwise impersonate a notary public while not lawfully commissioned as such nor otherwise officially authorized to perform notarial acts shall be guilty of a misdemeanor.

(4) Any person who shall steal or wrongfully possess a notary public's seal with the intent to use it in the commission of any crime shall be guilty of a felony.

(5) The penalties prescribed in this section shall not be exclusive. [I.C., § 51-119, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Cross References. — Punishment for misdemeanor when none specified, § 18-113.

Punishment for felony when none specified, § 18-112.

RESEARCH REFERENCES

A.L.R. — Admissibility, in action against notary public, of evidence as to usual business practice of notary public of identifying per-

sons seeking certificate of acknowledgment. 59 A.L.R.3d 1327.

51-120. Notary handbook. — The secretary of state shall prepare a handbook for notaries public which shall contain the provisions of this chapter and such other information as the secretary of state shall deem proper. A copy of the handbook shall be given to each applicant for appointment as a notary public. [I.C., § 51-120, as added by 1984, ch. 259, § 2, p. 620.]

51-121. Filing fees. — (1) The fee for filing an application for appointment as a notary public shall be thirty dollars (\$30.00).

(2) There shall be no fee charged for filing a letter of resignation, a certified copy of a judgment of conviction, a certified copy of findings of fact or extract therefrom, public record of proof of material misstatement of fact in an application, certified copy of order adjudging incompetency, or notice of death.

(3) The fee for filing notice of change of name or address shall be five dollars (\$5.00).

(4) The fee for filing notice of cancellation of a notary bond shall be five dollars (\$5.00). [I.C., § 51-121, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 3, p. 708.]

51-122. Severability. — If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair,

invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional. [I.C., § 51-122, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1984, ch. 259, which is compiled as §§ 51-101 to 51-103 and 51-104 to 51-123.

51-123. Transition. — (1) Each notary commission which was granted under the prior law shall be terminated upon the expiration of the notary bond which was in effect on December 31, 1984.

(2) Except for sections 51-103, 51-104, and 51-105, Idaho Code, the provisions of this chapter shall apply to notaries public who were commissioned under the prior law.

(3) This section shall be in full force and effect from January 1, 1985, to January 1, 1989. [I.C., § 51-123, as added by 1984, ch. 259, § 2, p. 620.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1984, ch. 259 provided that the act should take effect January 1, 1985.

CHAPTER 2

COMMISSIONERS OF DEEDS

SECTION.

51-201 — 51-207. [Repealed.]

51-201 — 51-207. Appointment — Duties — Fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, C.L., §§ 243-249; C.S., §§ 219-225; I.C.A., which comprised S.L. 1864, p. 522, §§ 1-4; §§ 50-201 — 50-207, were repealed by S.L. 1875, p. 674, § 5; R.S., §§ 300-306; R.C. & 1949, ch. 3, § 1.

TITLE 52

NUISANCES

CHAPTER.

1. NUISANCES IN GENERAL, §§ 52-101 — 52-111.
2. PUBLIC NUISANCES, §§ 52-201 — 52-206.
3. PRIVATE NUISANCES, §§ 52-301 — 52-303.

CHAPTER.

4. MORAL NUISANCES — ACTIONS FOR INJUNCTION AND ABATEMENT, §§ 52-401 — 52-417.

CHAPTER 1

NUISANCES IN GENERAL

SECTION.

- 52-101. Nuisance defined.
- 52-102. Public nuisance.
- 52-103. Moral nuisances — Definitions.
- 52-104. Moral nuisances — Types.
- 52-105. Moral nuisances — Personal property — Knowledge of nuisance.
- 52-106. Moral nuisances — Building where gambling is carried on.

SECTION.

- 52-107. Private nuisance.
- 52-108. When not a nuisance.
- 52-109. Liability of successive owners for continuing nuisance.
- 52-110. Abatement does not preclude action.
- 52-111. Actions for nuisance.

52-101. Nuisance defined. — Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. [I.C., § 52-101, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — *Aircraft hazard as public nuisance, § 21-502.

Booms or weirs so constructed as to prevent passage of logs or lumber a public nuisance, § 38-807.

Forest fire, burning without adequate precautions against spreading, a public nuisance, § 38-107.

Liquor nuisances, § 23-701 et seq.

Liquor sales by the drink, violation of license law a moral nuisance, § 23-937.

Similar provision in criminal law, § 18-5901.

Prior Laws. — A former chapter 1 of title 52, which comprised C.C.P. 1881, § 471, R.S., §§ 3620-3625, 4529; reen. R.C., §§ 3656, 3657; R.C., §§ 3657a-3657c, as added by 1915, ch. 43, § 2, p. 125; reen. R.C., §§ 3658-3661; R.C., § 4529; am. 1915, ch. 43, §§ 1, 3, 5, p. 125; reen. C.L., §§ 3656-3661, 4529; 1919, ch. 97, p. 361; C.S., §§ 6420-6429, 6956; I.C.A., §§ 51-101 — 51-111, was repealed by S.L. 1976, ch. 82, § 1.

JUDICIAL DECISIONS

ANALYSIS

Damages.

Hog raising facility.

Damages.

Damages may be recovered in addition to an injunction or abatement, but are not a prerequisite to such equitable relief, and the failure to recover damages does not necessarily mean there can be no injunction or abatement, if that equitable relief is otherwise appropriate. *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

Hog Raising Facility.

Given the abundant testimony in the record

as to presence of offensive odors at the hog-farm residence, as well as the copious number of flies, it was clear that the district court's nuisance determination was supported by substantial and competent evidence. *Crea v. Crea*, 135 Idaho 246, 16 P.3d 922 (2000).

Cited in: *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983); *Moon v. N. Idaho Farmers Ass'n*, 140 Idaho 536, 96 P.3d 637 (2004).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Burden of proof.

Channel of natural streams.

Ditch across road or street.

Gambling devices.

Herding sheep near homes.

Instructions.

Miner's excavation.

Motive in erection.

"Nuisances per se."

Obstruction of navigable estuary.

Obstruction of nonnavigable stream.

Preparation of meat products.

Railroad.

Sewage disposal facilities.

Softball field lights.

Streets and sidewalks.

Tourist court encroachments.

Trees.

Unsightly buildings.

Warehouses.

What constitutes nuisance.

Burden of Proof.

In order to obtain an injunction against or the abatement of an alleged nuisance, the complaining party must show a clear case supporting his right to relief. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

Channel of Natural Streams.

The current of a river cannot be appropriated by a riparian proprietor in Idaho, even assuming the possible persistence in the state of the doctrine of riparian rights, in view of statutes declaring the right of appropriators of water for irrigation or other lawful purpose to use the channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

Where defendant built a series of dams that increased the flow of a river to such an extent that plaintiff's access to his farm land, which was across the river from his place of residence and which situation made it necessary for plaintiff to ford the river in order to reach his farm land, was obstructed and plaintiff

sought to recover damages on the theory that the dams constituted a nuisance, court held that, by statute, defendant and other appropriators of water for lawful purposes had right to use channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

Ditch Across Road or Street.

When one constructs ditch across public street in such way as to render street unsafe or inconvenient for travel and maintains the same without a bridge, he is guilty of maintaining a nuisance. *Lewiston v. Booth*, 3 Idaho 692, 34 P. 809 (1893).

To complete highway across canal, bridge must be built; and, until bridge is built, highway, not being complete, is not capable of being lawfully obstructed at that point; canal, therefore, is not nuisance because of its unlawfully obstructing the free passage or use of highway. *MacCammelly v. Pioneer Irrigation Dist.*, 17 Idaho 415, 105 P. 1076 (1909).

Where canal has been constructed and operated in accordance with law, it is not a

nuisance and can become nuisance only by reason of manner in which it is maintained or method of its operation, and mere fact that municipality subsequently extends street across canal which has been lawfully constructed and operated does not convert canal into nuisance at place where street crosses canal. *Boise City v. Boise City Canal Co.*, 19 Idaho 717, 115 P. 505 (1911).

Gambling Devices.

Instruments and devices with which gambling is carried on are nuisances. *Mullen v. Moseley*, 13 Idaho 457, 90 P. 986 (1907).

Herding Sheep Near Homes.

Herding of large band of sheep near homes of settlers, thereby creating offensive smell, is a nuisance. *Sweet v. Ballentyne*, 8 Idaho 431, 69 P. 995 (1902).

Instructions.

The giving of instructions to the jury on the issue of nuisance was not erroneous as raising an issue not pleaded in the complaint where the complaint charged the defendant with acts and conditions which would constitute a nuisance under this section. *Archer v. Shields Lumber Co.*, 91 Idaho 861, 434 P.2d 79 (1967).

Miner's Excavation.

An excavation, pit or shaft made by a miner in the prosecution of his work is not of itself a nuisance. *Strong v. Brown*, 26 Idaho 1, 140 P. 773 (1914).

Motive in Erection.

Where erection of improvement is, in itself, lawful and not per se nuisance, fact that erection is from spite will not subject party to restraint from courts. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

In actions to abate nuisance before question of motive can be gone into or at least before it can have any bearing on result, unlawful character of act complained of must be established. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

"Nuisances Per Se."

Anything which does not amount to or constitute a substantial obstruction or an inherent interference with the free or comfortable enjoyment of life or property, within the meaning of the statute, is not a public "nuisance per se." *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

Obstruction of Navigable Estuary.

Where the construction of a fish farm obstructed free passage of a navigable estuary, such fish farm constituted a nuisance as defined by this section. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Obstruction of Nonnavigable Stream.

Because this section specifically provides that obstruction of navigable stream is nui-

sance, it does not follow that obstruction of nonnavigable stream is not. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Obstruction of stream which prevents ordinary flow of water for formerly appropriated irrigation purposes is nuisance and may be abated. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Defendant, upstream owner, a junior appropriator of water rights, had no right to damages from plaintiffs, a downstream owner, a prior appropriator, and users of water in his ditch, for removal of dam which was constructed by upstream owner, since the dam constituted a private nuisance and it was plaintiff's right to abate it. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Where plaintiff was entitled to water and dam constituted a private nuisance it was plaintiff's right to abate it and defendant was not entitled to damages resulting from removal of the obstruction by plaintiffs. The equipment plaintiffs took to the site crossed over sagebrush land causing no injury and they had a right to reasonable access to the channel to secure and safeguard their water right. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Preparation of Meat Products.

The smoking of meats, rendering lard and manufacturing of sausages and other meat products is not per se a nuisance. *Lorenzi v. Star Market Co.*, 19 Idaho 674, 115 P. 490 (1911).

Railroad.

Railroad and the work necessary and incident to its maintenance is not a nuisance and cannot be abated as such. *Boise Valley Constr. Co. v. Kroeger*, 17 Idaho 384, 105 P. 1070 (1909).

Sewage Disposal Facilities.

A sewage disposal facility, legal in its inception, is not a nuisance per se, and its location and the manner of its operation will determine whether it is a nuisance in fact. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

In proceedings for injunction against lagoon-type sewage disposal plant, evidence was insufficient to show that the lagoons, if constructed as proposed, would be located or operated so as to constitute a nuisance. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

Softball Field Lights.

A church softball field lighted by high-intensity lights was not a nuisance where use was restricted to the hours between 7:00 a.m. and 10:00 p.m. *Corporation of the Presiding Bishop of Church of Jesus Christ of Latter*

Day Saints v. Ashton, 92 Idaho 571, 448 P.2d 185 (1968).

Streets and Sidewalks.

It is not every obstruction in a street or highway that constitutes a "nuisance per se," since the right of the public to the free and unobstructed use of a street or way is subject to reasonable and necessary limitations, and to such incidental, temporary, or partial obstructions as manifest necessity may require. *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

A pedestrian, who was struck by a screen door which opened outwardly immediately in front of him when walking on a sidewalk in the business district of the city, could not recover for his injury from the owner and tenant of the building, since the maintenance and use of the screen door did not, in and of itself, constitute a substantial "obstruction" and was not a "nuisance per se." *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

The maintenance of a street with its terminus upon the bank of a river with a barrier erected thereat was not a nuisance for there was no defect which obstructed free passage or use of the street in the customary manner. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

Tourist Court Encroachments.

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

Trees.

Where defendant's predecessors in interest planted on the common boundary two poplar trees which have now matured to four or five feet in diameter at the base and thereafter plaintiff built approximately six feet from the boundary line and such mature trees now

extend over and onto the building, one of the trees pushing to and against the foundation of plaintiff's house and exerting sufficient pressure against the basement to crack and push the wall of the house inward, also damaging the surface, the court authorized, upon the plaintiff bringing this action on the ground that the condition constituted a nuisance, the destruction of one tree but the other tree being healthy and not damaging the foundation and walls of the house it would not be necessary to be removed. *Lemon v. Curington*, 78 Idaho 522, 306 P.2d 1091 (1957).

Unightly Buildings.

Fact that building is unsightly or out of harmony in construction with adjoining buildings, and therefore not pleasing to sight, does not make it offensive to the senses within meaning of this section. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

Warehouses.

Warehouse and platform obstructing city street was a public nuisance, even though city had allowed construction of same pursuant to a motion passed by city council and permit duly issued. *Boise City v. Sinsal*, 72 Idaho 329, 241 P.2d 173 (1952).

What Constitutes Nuisance.

Former statutes regarding nuisances meant something more than the usual, ordinary and lawful use of one's own property in order to constitute an act or acts a nuisance within the definitions they contain. *Bellevue v. Daly*, 14 Idaho 545, 94 P. 1036 (1908).

In order to create nuisance it is not enough that it diminish value of surrounding property, or reduce rental value. It must be such tangible injury as renders enjoyment of property essentially uncomfortable or inconvenient. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

Former similar section includes that which is a nuisance at all times and under all circumstances, and that which is not inherently a nuisance, or one per se, but which may become such by reason of surrounding circumstances, or the manner in which conducted. *Rowe v. city of Pocatello*, 70 Idaho 343, 218 P.2d 695 (1950).

RESEARCH REFERENCES

Am. Jur. — 24 Am. Jur. 2d, Disorderly Houses, § 8.

38 Am. Jur. 2d, Gambling, §§ 14 et seq., 60.

45 Am. Jur. 2d, Intoxicating Liquors, § 345 et seq.

58 Am. Jur. 2d, Nuisances, § 1 et seq.

C.J.S. — 66 C.J.S., Nuisances, § 2 et seq.

A.L.R. — Keeping pigs as a nuisance. 2 A.L.R.3d 931.

Keeping poultry as nuisance. 2 A.L.R.3d 965.

Motor bus or truck terminal as nuisance. 2 A.L.R.3d 1372.

Electric generating plant or transformer station as nuisance. 4 A.L.R.3d 902.

Saloons or taverns as nuisance. 5 A.L.R.3d 989.

Keeping of dogs as enjoined nuisance. 11 A.L.R.3d 1399.

Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoined nuisance. 21 A.L.R.3d 1058.

Gun club, or shooting gallery or range, as nuisance. 26 A.L.R.3d 661.

Keeping horses as nuisance. 27 A.L.R.3d 627.

Punitive damages in actions based on nuisance. 31 A.L.R.3d 1346.

Children's playground as nuisance. 32 A.L.R.3d 1127.

Billboards and other outdoor advertising signs as civil nuisance. 38 A.L.R.3d 647.

Modern status of rules as to balance of convenience or social utility as affecting relief for nuisance. 40 A.L.R.3d 601.

Operation of incinerator as nuisance. 41 A.L.R.3d 1009.

Laundry or dry cleaning establishment as nuisance. 41 A.L.R.3d 1236.

Automobile racetrack or drag strip as nuisance. 41 A.L.R.3d 1273.

Public swimming pool as nuisance. 49 A.L.R.3d 652.

Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Right of one compelled to discontinue business or activity constituting nuisance to indemnity from successful plaintiff. 53 A.L.R.3d 873.

Zoo as nuisance. 58 A.L.R.3d 1126.

Porno shops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Interference with radio or television recep-

tion as nuisance. 58 A.L.R.3d 1142.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Airport operations or flight of aircraft as nuisance. 79 A.L.R.3d 253.

Existence of, and relief from, nuisance created by operation of air conditioning or ventilating equipment. 79 A.L.R.3d 320.

Fence as nuisance. 80 A.L.R.3d 962.

Massage parlor as nuisance. 80 A.L.R.3d 1020.

Operation of cement plant as nuisance. 82 A.L.R.3d 1004.

Carwash as nuisance. 4 A.L.R.4th 1308.

Funeral home as private nuisance. 8 A.L.R.4th 324.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Tort immunity of nongovernmental charities — Modern status. 25 A.L.R.4th 517.

Tower or antenna as constituting nuisance. 88 A.L.R.5th 641.

Keeping of domestic animal as constituting public or private nuisance. 90 A.L.R.5th 619.

Sewage treatment plant as constituting nuisance. 92 A.L.R.5th 517.

Nudity as constituting nuisance. 92 A.L.R.5th 593.

Hog breeding, confining, or processing facility as constituting nuisance. 93 A.L.R.5th 621.

Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.

Vibrations not accompanied by blasting or explosion as constituting nuisance. 103 A.L.R.5th 157.

52-102. Public nuisance. — A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. [I.C., § 52-102, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — Booms or weirs so constructed as to prevent passage of logs constitute a public nuisance, § 38-807.

Dilapidated buildings in cities or villages, § 50-335.

Maintenance of a public nuisance, a misdemeanor, § 18-5903.

Uncapped artesian wells, § 42-1601 et seq.

Prior Laws. — Former § 52-102 was repealed. See Prior Laws, § 52-101.

JUDICIAL DECISIONS

Cited in: *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Gambling machines and devices.
 Tourist court encroachments.
 Warehouses.

Gambling Machines and Devices.

Operation of gambling machines and devices constitutes a moral public nuisance. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Tourist Court Encroachments.

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchas-

ers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

Warehouses.

Warehouse and platform obstructing city street was a public nuisance, even though city had allowed construction of same pursuant to a motion passed by city council and permit duly issued. *Boise City v. Sinsel*, 72 Idaho 329, 241 P.2d 173 (1952).

52-103. Moral nuisances — Definitions. — As used in title 52, Idaho Code, relating to moral nuisances.

(A) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignment, or prostitution which occur on the premises.

(B) "Lewd matter" is synonymous with "obscene matter" and means any matter:

- (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- (2) which depicts or describes patently offensive representations or descriptions of:
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value.

(C) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(D) "Matter" means a motion picture film or a publication or both.

(E) "Moral Nuisance" means a nuisance which is injurious to public morals.

(F) "Motion picture film" shall include any:

- (1) film or plate negative;
- (2) film or plate positive;
- (3) film designed to be projected on a screen for exhibition;
- (4) films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.[:]
- (5) video tape or any other medium used to electronically reproduce images on a screen.

(G) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(H) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(I) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(J) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter. [I.C., § 52-103, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — Abatement of moral nuisances, § 52-401 et seq.

Health officers to cooperate in suppression of prostitution, § 39-603.

Liquor nuisances, § 23-701 et seq.

Prior Laws. — Former § 52-103 was repealed. See Prior Laws, § 52-101.

Compiler's Notes. — The bracketed semicolon in subdivision (F)(4) was inserted by the compiler.

JUDICIAL DECISIONS

Cited in: *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).

52-104. Moral nuisances — Types. — The following are declared to be moral nuisances:

(A) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;

(B) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(C) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(D) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(E) Any and every lewd publication possessed at a place which is a moral nuisance under this section; and

(F) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur. [I.C., § 52-104, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-104 was repealed. See Prior Laws, § 52-101.

52-105. Moral nuisances — Personal property — Knowledge of nuisance. — The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(A) All monies paid as admission price to the exhibition of any lewd film found to be a moral nuisance.

(B) All valuable consideration received for the sale of any lewd publication which is found to be a moral nuisance.

(C) The furniture and movable contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in section 52-405, Idaho Code, upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the acts, conditions or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding. [I.C., § 52-105, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-105 was repealed. See Prior Laws, § 52-101.

52-106. Moral nuisances — Building where gambling is carried on. — Any building, place, or the ground itself, wherein or whereon gambling or any game of chance for money, checks, credit or other representatives of value is carried on or takes place, or gambling paraphernalia is kept, or any notice, sign or device advertising or indicating the existence or presence of such gambling or any game of chance is displayed or exposed to view, is declared a moral nuisance and shall be enjoined and abated as provided by law. [I.C., § 52-106, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — Abatement of moral nuisances, § 52-401 et seq.

Prior Laws. — Former § 52-106 was repealed. See Prior Laws, § 52-101.

JUDICIAL DECISIONS

Cited in: Rossi v. United States, 49 F.2d 1 (9th Cir. 1931).

DECISIONS UNDER PRIOR LAW

Gambling Machines and Devices.

Operation of gambling machines and devices constitutes a moral public nuisance.

State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328 (1953).

52-107. Private nuisance. — Every nuisance not defined by law as a public nuisance or a moral nuisance, is private. [I.C., § 52-107, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — Private nuisances in general, § 52-301.

Prior Laws. — Former § 52-107 was repealed. See Prior Laws, § 52-101.

52-108. When not a nuisance. — Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. [I.C., § 52-108, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-108 was repealed. See Prior Laws, § 52-101.

JUDICIAL DECISIONS

Express Authority.

This section only exempts a party from a nuisance action when the activity is done under the express authority of a statute; where, in a nuisance action by the state against current mine owners for water pollution, although the defendants were in compliance with rules and regulations of the department of health and welfare, the defendants

had not established that their activities, or historical mining activities of prior owners, were done or maintained under the express authority of a statute, a material question of fact existed, precluding summary judgment. *Idaho v. Hanna Mining Co.*, 699 F. Supp. 827 (D. Idaho 1987), *aff'd*, 882 F.2d 392 (9th Cir. 1989).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.
Channel of natural streams, using.
Fluctuating river flow.
Section applied.

Application.

This section refers only to statutes, but if this section were applicable to a permit granted by a city, not even an ordinance, it did not authorize an unlawful, wrongful or negligent act, and afforded no defense to the city. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Channel of Natural Streams, Using.

The current of a river cannot be appropriated by a riparian proprietor in Idaho, even assuming the possible persistence in that state of the doctrine of riparian rights, in view of statutes declaring the right of appropriators of water for irrigation or other lawful purpose to use the channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

Where defendant built a series of dams that increased the flow of a river to such extent that plaintiff's access to his farm land, which was across the river from his place of residence and which situation made it necessary for plaintiff to ford the river in order to reach his farm land, was obstructed and plaintiff

sought to recover damages on the theory that the dams constituted a nuisance, court held that, by statute, defendant and other appropriators of water for lawful purposes had right to use channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

Fluctuating River Flow.

An easement which granted a power company the right to fluctuate the flow of a river would be construed as granting something in addition to the right of the power company to fill completely the natural channel of the river, since the power company had the latter right without the aid of an easement. *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir. 1955).

Section Applied.

A ditch or canal constructed and maintained under express authority of statute cannot be deemed a nuisance. *MacCammelly v. Pioneer Irrigation Dist.*, 17 Idaho 415, 105 P. 1076 (1909); *Boise City v. Boise City Canal Co.*, 19 Idaho 717, 115 P. 505 (1911); *City of*

Twin Falls v. Harlan, 27 Idaho 769, 151 P. 1191 (1915).

Cellar-way and doors in sidewalk maintained by authority of law cannot be deemed a nuisance. Lewiston v. Isaman, 19 Idaho 653, 115 P. 494 (1911).

Running of licensed saloon in regular and lawful manner was not a nuisance (decided when local option law was in effect). Village of Am. Falls v. West, 26 Idaho 301, 142 P. 42 (1914).

52-109. Liability of successive owners for continuing nuisance. — Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it. [I.C., § 52-109, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-109 was repealed. See Prior Laws, § 52-101.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.
Tourist court.

Construction.

The purchaser of property containing a nuisance may not defend an action for damages or abatement on the ground that he did not create it, but he is not liable for damages incurred previous to his purchase. Brose v. Twin Falls Land & Water Co., 24 Idaho 266, 133 P. 673 (1913); Partridge v. Twin Falls Land & Water Co., 24 Idaho 275, 133 P. 677 (1913).

Tourist Court.

Even though plaintiffs, purchasers, did not create the encroachments contained in the tourist site, they would be liable as successive owners of the property. Galvin v. Appleby, 78 Idaho 457, 305 P.2d 309 (1956).

52-110. Abatement does not preclude action. — The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. [I.C., § 52-110, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-110 was repealed. See Prior Laws, § 52-101.

52-111. Actions for nuisance. — Anything which is injurious to health or morals, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. In the case of a moral nuisance, the action may be brought by any resident citizen of the county; in all other cases the action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered. [I.C., § 52-111, as added by 1976, ch. 82, § 2, p. 270.]

STATUTORY NOTES

Cross References. — Abatement of moral nuisance, § 52-401 et seq.
“Moral nuisance” defined, § 52-103.
“Nuisance” defined, § 52-101.

Private person may sue for public nuisance specially injurious, § 52-206.
Prior Laws. — Former § 52-111 was repealed. See Prior Laws, § 52-101.

JUDICIAL DECISIONS

Damages.
Damages may be recovered in addition to an injunction or abatement, but are not a prerequisite to such equitable relief, and the failure to recover damages does not necessarily mean there can be no injunction or abatement, if that equitable relief is otherwise appropriate. *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).
Even though landowners had prevailed in their claim for a nuisance caused by the

neighbors’ interference with their use of a driveway easement, the district court properly denied the landowners’ monetary damages, where the nuisance had stopped, the driveway was no longer obstructed, and there was no diminished property value. *Benninger v. Derifield*, 142 Idaho 486, 129 P.3d 1235 (2006).
Cited in: *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).

DECISIONS UNDER PRIOR LAW
ANALYSIS

Instructions.
Special injury.
Trees causing damage.

Instructions.
The giving of instructions to the jury on issue of nuisance was not erroneous as raising an issue not pleaded in the complaint where the complaint charged the defendant with acts and conditions which would constitute a nuisance under this section. *Archer v. Shields Lumber Co.*, 91 Idaho 861, 434 P.2d 79 (1967).
Special Injury.
This section does not change the general rule that a private party to maintain an action to abate a public nuisance must show special injury to himself. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

Trees Causing Damage.
Where defendant’s predecessors in interest planted on the common boundary two poplar

trees which have now matured to four or five feet in diameter at the base and thereafter plaintiff built approximately six feet from the boundary line and such mature trees now extend over and onto the building, one of the trees pushing to and against the foundation of plaintiff’s house and exerting sufficient pressure against the basement to crack and push the wall of the house inward also damaging the surface, the court authorized, upon the plaintiff bringing this action on the ground that the condition constituted a nuisance, the destruction of one tree but the other tree being healthy and not damaging the foundation and walls of the house it would not be necessary to be removed. *Lemon v. Curington*, 78 Idaho 522, 306 P.2d 1091 (1957).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 246 et seq.
C.J.S. — 66 C.J.S., Nuisances, §§ 91 et seq., 133 et seq.

A.L.R. — Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.

CHAPTER 2

PUBLIC NUISANCES

SECTION.
52-201. Not legalized by prescription.
52-202. Remedies.
52-203. Indictment or information.

SECTION.
52-204. Action by private person.
52-205. Abatement by public body or officer.
52-206. Abatement by private person.

52-201. Not legalized by prescription. — No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. [R.S., § 3630; reen. R.C. & C.L., § 3662; C.S., § 6430; I.C.A., § 51-201.]

STATUTORY NOTES

Cross References. — “Public nuisance” defined, § 52-102.

JUDICIAL DECISIONS

Prescriptive Right Not Acquired. right to maintain a nuisance. *Lewiston v. Booth*, 3 Idaho 692, 34 P. 809 (1893).
No lapse of time can give a prescriptive

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 443 et seq.
C.J.S. — 66 C.J.S., Nuisances, § 65.

52-202. Remedies. — The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

[R.S., § 3631; compiled R.C. & C.L., § 3663; C.S., § 6431; I.C.A., § 51-202.]

JUDICIAL DECISIONS

Abatement.

This section makes no distinction as to the remedy to abate nuisances which are a crime per se and those which are not such a crime. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon de-

mand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 218 et seq.

C.J.S. — 66 C.J.S., Nuisances, § 133 et seq.

52-203. Indictment or information. — The remedy by indictment or information is regulated by the Penal Code. [R.S., § 3632; reen. R.C. & C.L., § 3664; C.S., § 6432; I.C.A., § 51-203.]

STATUTORY NOTES

Cross References. — Penalty for maintenance of public nuisance, § 18-5903.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 392.
C.J.S. — 66 C.J.S., Nuisances, § 154.

52-204. Action by private person. — A private person may maintain an action:

1. For a moral nuisance, if he be a resident citizen of the county, whether the nuisance complained of is specially injurious to him or not.
2. For any other public nuisance, if it is specially injurious to himself. [R.S., § 3633; reen. R.C., § 3665; am. 1915, ch. 43, § 4, p. 125; reen. C.L., § 3665; C.S., § 6433; I.C.A., § 51-204.]

JUDICIAL DECISIONS

ANALYSIS

Pleading.
 Private actions.
 Res judicata.
 Suing in name of state.

Pleading.

Private person who sues to abate public nuisance must allege by positive averment in his complaint sufficient facts to show special injury to himself. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

Private Actions.

Private person may sue to abate or restrain continuance of public nuisance, provided he alleges and shows that such nuisance is especially injurious to himself. Thus, a person whose property is rendered undesirable as a residence and thereby depreciated in value because of the maintenance of a house of prostitution in the neighborhood may sue to enjoin the continued maintenance of the same as a nuisance. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

A private person who is especially injured by the maintenance of obstructions in a navigable river may sue to abate the same. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

A reasonable obstruction in a navigable stream, which merely impairs navigation but does not destroy it, cannot be enjoined at the suit of a private person. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

To authorize a private person to bring an action to abate a public nuisance, the plaintiff

must allege and show that he will be specially injured in a different way from the public generally or deprived of the free use of his own private property. *Stricker v. Hillis*, 15 Idaho 709, 99 P. 831 (1909).

To have suffered in a different manner or extent than the public at large is to have received a special and peculiar damage for which a recovery may be had. *Stricker v. Hillis*, 17 Idaho 646, 106 P. 1128 (1910).

Where the construction of a fish farm in an estuary deprived a riparian landowner of ingress and egress to her property via the estuary, she was entitled to bring an action for abatement of the nuisance. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Res Judicata.

Trial and acquittal of a party charged in criminal proceedings with construction of a nuisance in a navigable stream is not a bar to civil action to enjoin nuisance. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

Suing in Name of State.

Citizens of county are entitled to maintain action in name of state to enjoin operation of gambling machines and devices on the ground that operation of same constituted a lottery. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 248 et seq.

C.J.S. — 66 C.J.S., Nuisances, §§ 65, 66, 109.

52-205. Abatement by public body or officer. — A public nuisance may be abated by any public body or officer authorized thereto by law. [R.S., § 3634; reen. R.C. & C.L., § 3666; C.S., § 6434; I.C.A., § 51-205.]

STATUTORY NOTES

Cross References. — Liquor nuisance, abatement, § 23-705.

JUDICIAL DECISIONS

ANALYSIS

Road overseer.
Tourist court.

Road Overseer.

Road overseer is the proper party to bring action to abate a nuisance when such nuisance consists of obstruction to public highway within his district. *Mesurvey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

Tourist Court.

Sellers' contention that purchasers were not bound to remove encroachments of tourist

site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 401 et seq.

C.J.S. — 66 C.J.S., Nuisances, §§ 64, 90, 109.

52-206. Abatement by private person. — Any person may abate a public nuisance which is specially injurious to him, by removing, or if necessary, destroying, the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. [R.S., § 3635; reen. R.C. & C.L., § 3667; C.S., § 6435; I.C.A., § 51-206.]

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, § 418 et seq.

C.J.S. — 66 C.J.S., Nuisances, § 86 et seq.

CHAPTER 3

PRIVATE NUISANCES

SECTION.

52-301. Remedies for private nuisances.

52-302. Abatement — When allowed.

SECTION.

52-303. Abatement — When notice is required.

52-301. Remedies for private nuisances. — The remedies against a private nuisance are:

1. A civil action; or,

2. Abatement.

[R.S., § 3640; reen. R.C. & C.L., § 3668; C.S., § 6436; I.C.A., § 51-301.]

STATUTORY NOTES

Cross References. — Actions for nuisance, § 52-111.

“Private nuisance” defined, § 52-107.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, §§ 232, 235 et seq.

C.J.S. — 66 C.J.S., Nuisances, § 84 et seq.

A.L.R. — Putative damages in actions based on nuisance. 31 A.L.R.3d 1346.

“Coming to nuisance” as a defense or estoppel. 42 A.L.R.3d 344.

Interference with radio or television reception as nuisance. 58 A.L.R.3d 1142.

Casting of light on another’s premises as constituting nuisance. 79 A.L.R.3d 253.

52-302. Abatement — When allowed. — A person injured by a private nuisance may abate it by removing, or, if necessary, destroying, the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury. [R.S., § 3641; reen. R.C. & C.L., § 3669; C.S., § 6437; I.C.A., § 51-302.]

JUDICIAL DECISIONS

ANALYSIS

Obstruction of estuary.

Obstruction of nonnavigable streams.

Obstruction of Estuary.

Where the construction of a fish farm in an estuary deprived a riparian landowner of the right of ingress to and egress from her property via the estuary, she was entitled to bring an action for abatement of the nuisance. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Obstruction of Nonnavigable Streams.

Obstruction of stream which prevents ordinary flow of water for formerly appropriated irrigation purposes is nuisance and may be abated. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Defendant upstream owner, a junior appropriator of water rights, had no right to damages from plaintiffs, a downstream owner, a

prior appropriator, and users of water in his ditch, for removal of dam which was constructed by upstream owner, since the dam constituted a private nuisance and it was plaintiffs’ right to abate it. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Where plaintiff was entitled to water, and dam constituted private nuisance, it was plaintiff’s right to abate it and defendant was not entitled to damages resulting from removal of the obstruction by plaintiffs. The equipment plaintiffs took to the site crossed over sagebrush land causing no injury and they had a right to reasonable access to the channel to secure and safeguard their water right. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Nuisances, §§ 418, 419.

C.J.S. — 66 C.J.S., Nuisances, §§ 85-90.

52-303. Abatement — When notice is required. — Where a private nuisance results from a mere omission of the wrongdoer, and cannot be

abated without entering upon his land, reasonable notice must be given to him before entering to abate it. [R.S., § 3642; reen. R.C. & C.L., § 3670; C.S., § 6438; I.C.A., § 51-303.]

CHAPTER 4

MORAL NUISANCES — ACTIONS FOR INJUNCTION AND ABATEMENT

SECTION.

- 52-401. Cumulative remedy.
 52-402. Who may maintain action.
 52-403. Pleadings — Jurisdiction — Venue —
 Application for temporary injun-
 ction.
 52-404. Order restraining removal of per-
 sonal property from premises
 — Service — Punishment.
 52-405. Notice of hearing on temporary injun-
 ction — Consolidation.
 52-406. Right to possession of real property and
 personal property after hearing
 on the temporary injunction —
 Conditions for avoidance of tem-
 porary forfeiture.
 52-407. Right to possession of real property
 and personal property after

SECTION.

- finding of public nuisance —
 Conditions for reentry and re-
 possession.
 52-408. Priority of action.
 52-409. Evidence.
 52-410. Evidence of reputation admissible.
 52-411. Costs.
 52-412. Content of final judgment and order.
 52-413. Court shall punish offender for viola-
 tion of injunction or order.
 52-414. Lease void if building used for lewd
 purposes.
 52-415. Civil penalty — Forfeiture — Ac-
 counting — Lien as to ex-
 penses of abatement.
 52-416. Immunity.
 52-417. Severability.

52-401. Cumulative remedy. — In addition to any other remedy provided by law, any act, occupation, structure or thing which is a moral nuisance, may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing may be enjoined, as in this chapter provided. [I.C., § 52-401, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Cross References. — “Moral nuisance” defined, §§ 52-103 — 52-106.

Indecency and obscenity, § 18-4101 et seq.

Prostitution, § 18-5601 et seq.

Suppression of prostitution under health laws, § 39-603.

Prior Laws. — A former chapter 4 of title 52, which comprised R.C., §§ 4628a-4628j, as added by 1915, ch. 43, § 6, p. 125; reen. C.L., §§ 4628a-4628j; C.S., §§ 7042-7051; I.C.A., §§ 51-401 — 51-410, was repealed by S.L. 1976, ch. 82, § 3.

JUDICIAL DECISIONS

Cited in: State ex rel. Kidwell v. United States Mktg., Inc., 102 Idaho 451, 631 P.2d

622 (1981); United States Mktg., Inc. v. Leroy, 524 F. Supp. 1277 (D. Idaho 1981).

DECISIONS UNDER PRIOR LAW

Constitutionality.

Similar act relating to intoxicating liquors

was held constitutional. State v. Kasiska, 27 Idaho 548, 150 P. 17 (1915).

RESEARCH REFERENCES

C.J.S. — 66 C.J.S., Nuisances, §§ 35, 41, 46, 62.

A.L.R. — Exhibition of obscene motion picture as nuisance. 50 A.L.R.3d 969.

Porno shops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134. Massage parlor as nuisance. 80 A.L.R.3d 1020.

52-402. Who may maintain action. — The attorney general, prosecuting attorney, or any private resident citizen of the county may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a moral nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars (\$500), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the restraining order or temporary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney or the attorney general, and no action shall be maintained against the public official for his official action when brought in good faith. [I.C., § 52-402, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Cross References. — Private person may maintain action, §§ 52-111, 52-204.

Prior Laws. — Former § 52-402 was repealed. See Prior Laws, § 52-401.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Citizens of County.

Citizens of county are entitled to maintain action in name of state to enjoin operation of gambling machines and devices on the ground

that operation of same constituted a lottery. State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328 (1953).

52-403. Pleadings — Jurisdiction — Venue — Application for temporary injunction. — The action, provided for in this chapter, shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten (10) days after the filing. [I.C., § 52-403, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-403 was repealed. See Prior Laws, § 52-401.

52-404. Order restraining removal of personal property from premises — Service — Punishment. — Where such application for a temporary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that, pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions thereafter may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect. [I.C., § 52-404, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Cross References. — Contempt of court, § 7-601 et seq.

Prior Laws. — Former § 52-404 was repealed. See Prior Laws, § 52-401.

52-405. Notice of hearing on temporary injunction — Consolidation. — A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least five (5) days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in section 52-404, Idaho Code, in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible upon the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits. [I.C., § 52-405, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-405 was repealed. See Prior Laws, § 52-401.

52-406. Right to possession of real property and personal property after hearing on the temporary injunction — Conditions for avoidance of temporary forfeiture. — If upon hearing, the allegations of the complaint are sustained by clear and convincing evidence that a moral nuisance exists and is likely to continue in the absence of injunctive relief, the court shall issue a temporary injunction, without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control, or in charge of the nuisance so enjoined had received five (5) days' notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein and shall forthwith issue an order closing such place against its use for any purpose until final decision is rendered on the application for a permanent injunction, unless:

- (1) the nuisance complained of has been abated by such person, or
- (2) the owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by section 52-414, Idaho Code.

Such order shall also continue in effect for such further period the order, authorized in section 52-404, Idaho Code, restraining the removal of personal property or, if not so issued, shall include such an order restraining for such period the removal or interference with the personal property and contents located therein. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in section 52-404, Idaho Code.

Such order shall also require such persons to show cause within thirty (30) days why such closing order should not be made permanent, as provided for in section 52-412, Idaho Code. [I.C., § 52-406, as added by 1976, ch. 82, § 4, p. 270; am. 1982, ch. 271, § 1, p. 702.]

STATUTORY NOTES

Prior Laws. — Former § 52-406 was repealed. See Prior Laws, § 52-401.

JUDICIAL DECISIONS

ANALYSIS

No prior restraint.
Purpose.

No Prior Restraint.

Where the state filed suit against two adult bookstores asking injunctive relief abating the alleged nuisance and for forfeiture of the use of the real property in question, the one-

year closure or forfeiture order did not by itself constitute an unlawful prior restraint upon the exercise of free speech; such finding was based upon (1) the extensive power of the state to impose a forfeiture on neutral and

innocent property used in the commission of forbidden acts, (2) the power of the state to impose sanctions of its choice upon those who disseminate unprotected obscenity, (3) the fact that the forfeiture or closure order was not directed at any speech or publication, but was instead aimed at the real property apart from the content of expression contained therein, and (4) the fact that the defendants remained free to disseminate any materials, except those already determined to be obscene, at any other location, subject to further penal actions by the state should the defendants again violate laws regulating obscenity. State ex rel. Kidwell v. United States Mktg.,

Inc., 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

Purpose.

The manifest purpose of Idaho's one-year closing provision is not to prevent future expression, but to punish past illegal conduct by depriving the violator of economic gain; this is a permissible state objective implemented by permissible means. State ex rel. Kidwell v. United States Mktg., Inc., 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

52-407. Right to possession of real property and personal property after finding of public nuisance — Conditions for reentry and repossession. — The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear between the filing of the complaint and the hearing on the application for a permanent injunction, and upon payment of all cost incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, until the decision of the court is rendered on the application for a permanent injunction, then the court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall discharge said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property, under this section, shall not release it from any judgment, lien, penalty, or liability to which it may be subjected. [I.C., § 52-407, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-407 was repealed. See Prior Laws, § 52-401.

52-408. Priority of action. — The action provided for in this chapter shall be set down for trial within ninety (90) days and shall have precedence over all other cases except crimes, election contests, or injunctions. [I.C., § 52-408, as added by 1976, ch. 82, § 4, p. 270; am. 1982, ch. 271, § 2, p. 702.]

STATUTORY NOTES

Prior Laws. — Former § 52-408 was repealed. See Prior Laws, § 52-401.

52-409. Evidence. — In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place, is admissible for the purpose of proving the existence of said nuisance, and is prima facie evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance. [I.C., § 52-409, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-409 was repealed. See Prior Laws, § 52-401.

52-410. Evidence of reputation admissible. — At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. [I.C., § 52-410, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Prior Laws. — Former § 52-410 was repealed. See Prior Laws, § 52-401.

52-411. Costs. — If the action is brought by a private person and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed for that reason before trial, or if the action is dismissed for want of prosecution, the costs may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere, and the entire expenses of such abatement, including attorney's fees, shall be recoverable by plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a private person, it shall not be voluntarily dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one (1) term of court, any person who is a citizen of the county, or has an office therein, or the attorney general or the prosecuting attorney, may be substituted for the complainant and prosecute said action to judgment. [I.C., § 52-411, as added by 1976, ch. 82, § 4, p. 270.]

52-412. Content of final judgment and order. — If the existence of a nuisance is admitted or established in an action as provided for in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court, as provided for in sections 52-406 and 52-407, Idaho Code, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not be sold.

Such order shall also require the renewal for one (1) year of any bond furnished by the owner of the real property, as provided in section 52-407, Idaho Code, or, if not so furnished, shall continue for one (1) year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose, and keeping it closed for a period of one (1) year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in section 52-407, Idaho Code.

Owners of unsold personal property and contents so seized must appear and claim the same within ten (10) days after such order of abatement is made, and prove innocence, to the satisfaction of the court, of any knowledge of said use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court. [I.C., § 52-412, as added by 1976, ch. 82, § 4, p. 270.]

JUDICIAL DECISIONS

ANALYSIS

No prior restraint.
Purpose.

No Prior Restraint.

Where the state filed a suit against two adult bookstores asking injunctive relief abating the alleged nuisance and for forfeiture of the use of the real property in question, the one-year closure or forfeiture order did not by itself constitute an unlawful prior restraint upon the exercise of free speech; such finding was based upon (1) the extensive power of the state to impose a forfeiture on neutral and innocent property used in the commission of forbidden acts, (2) the power of the state to impose sanctions of its choice upon those who disseminate unprotected obscenity, (3) the

fact that the forfeiture or closure order was not directed at any speech or publication, but was instead aimed at the real property apart from the content of expression contained therein, and (4) the fact that the defendants remain free to disseminate any materials, except those already determined to be obscene, at any other location, subject to further penal actions by the state should the defendants again violate laws regulating obscenity. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

Purpose.

The manifest purpose of Idaho's one-year closing provision is not to prevent future expression, but to punish past illegal conduct by depriving the violator of economic gain and this is a permissible state objective imple-

mented by permissible means. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

52-413. Court shall punish offender for violation of injunction or order. — In case of the violation of any injunction or closing order, granted under this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court may summarily try and punish the offender. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. [I.C., § 52-413, as added by 1976, ch. 82, § 4, p. 270.]

52-414. Lease void if building used for lewd purposes. — If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises. [I.C., § 52-414, as added by 1976, ch. 82, § 4, p. 270.]

52-415. Civil penalty — Forfeiture — Accounting — Lien as to expenses of abatement. — Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in section 52-104, Idaho Code, and all monies and other considerations declared to be a moral nuisance under section 52-105, Idaho Code, are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405, Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

Upon judgment against the defendants in legal proceedings brought pursuant to this chapter, an accounting shall be made by such defendant or defendants of all monies received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all monies estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare, public health and public morals.

Where the action is brought pursuant to this chapter, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) investigative costs.

(2) court costs.

(3) reasonable attorney's fees arising out of the preparation for, and trial of the cause, and appeals therefrom, and other costs allowed on appeal.

(4) printing costs of trial and appellate briefs, and all other papers filed in such proceedings. [I.C., § 52-415, as added by 1976, ch. 82, § 4, p. 270.]

JUDICIAL DECISIONS

ANALYSIS

Award of costs.

Constitutionality.

Award of Costs.

The portion of this section relating to recovery of abatement costs is clearly remedial in nature and should be liberally construed to effect its manifest objectives. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

In an action to abate two adult bookstores as moral nuisances, where the trial court awarded only nominal attorney fees to the state, on the ground that the state had failed to keep hourly time sheets, and denied the state all other abatement costs, such award was not in keeping with the legislative policy of this section and was insufficient. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102

Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

Constitutionality.

This section, which awards abatement costs only to a prevailing plaintiff, does not violate the equal protection clause of the United States Constitution where the award furthers a legitimate governmental objective. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

Cited in: *United States Mktg., Inc. v. Leroy*, 524 F. Supp. 1277 (D. Idaho 1981); *DeWils Interiors, Inc. v. Dines*, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

52-416. Immunity. — The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (1) has no financial interest in the place wherein he is so employed, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this chapter, including pre-trial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. [I.C., § 52-416, as added by 1976, ch. 82, § 4, p. 270.]

52-417. Severability. — If any section, subsection, sentence, or clause of this act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this act. It is hereby declared that this act would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid. [I.C., § 52-417, as added by 1976, ch. 82, § 4, p. 270.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1976, ch. 82 compiled herein as §§ 52-101 to 52-111 and 52-401 to 52-417.

TITLE 53

PARTNERSHIP

CHAPTER

1. SPECIAL PARTNERSHIP. [REPEALED.]
2. UNIFORM LIMITED PARTNERSHIP ACT, §§ 53-2-101 — 53-2-1205.
3. UNIFORM PARTNERSHIP LAW, §§ 53-301 — 53-3-1205.
4. MINING PARTNERSHIP, §§ 53-401 — 53-412.
5. ASSUMED BUSINESS NAMES, §§ 53-501 — 53-511.

CHAPTER

6. IDAHO LIMITED LIABILITY COMPANY ACT. [REPEALED EFFECTIVE JULY 1, 2010.], §§ 53-601 — 53-672.
7. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, §§ 53-701 — 53-717.

CHAPTER 1

SPECIAL PARTNERSHIP

SECTION.

53-101 — 53-125. [Repealed.]

53-101 — 53-125. Special partnerships. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised (1885, p. 148, §§ 1-25; R.S., §§ 3270-3294; reen. R.C. & C.L., §§ 3336-3360; C.S., §§ 5757-5781; I.C.A., §§ 52-101 — 52-125) were repealed by S.L. 1982, ch. 106, § 1.

CHAPTER 2

UNIFORM LIMITED PARTNERSHIP ACT

PART 1. GENERAL PROVISIONS

SECTION.

- 53-2-101. Short title.
- 53-2-102. Definitions.
- 53-2-103. Knowledge and notice.
- 53-2-104. Nature, purpose and duration of entity.
- 53-2-105. Powers.
- 53-2-106. Governing law.
- 53-2-107. Supplemental principles of law — Rate of interest.
- 53-2-108. Name.
- 53-2-109. Reservation of name.
- 53-2-110. Effect of partnership agreement — Nonwaivable provisions.
- 53-2-111. Required information.
- 53-2-112. Business transactions of partner with partnership.
- 53-2-113. Dual capacity.
- 53-2-114 — 53-2-117. [Repealed.]
- 53-2-118. Consent and proxies of partners.

PART 2. FORMATION — CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

SECTION.

- 53-2-201. Formation of limited partnership — Certificate of limited partnership.
- 53-2-202. Amendment or restatement of certificate.
- 53-2-203. Statement of termination.
- 53-2-204. Signing of records.
- 53-2-205. Signing and filing pursuant to judicial order.
- 53-2-206. Delivery to and filing of records by secretary of state — Effective time and date.
- 53-2-207. Correcting filed record.
- 53-2-208. Liability for false information in filed record.
- 53-2-209. Certificate of existence or authorization.
- 53-2-210. Annual report for secretary of state.

PART 3. LIMITED PARTNERS

SECTION.

- 53-2-301. Becoming limited partner.
- 53-2-302. No right or power as limited partner to bind limited partnership.
- 53-2-303. No liability as limited partner for limited partnership obligations.
- 53-2-304. Right of limited partner and former limited partner to information.
- 53-2-305. Limited duties of limited partners.
- 53-2-306. Person erroneously believing self to be limited partner.

PART 4. GENERAL PARTNERS

- 53-2-401. Becoming general partner.
- 53-2-402. General partner agent of limited partnership.
- 53-2-403. Limited partnership liable for general partner's actionable conduct.
- 53-2-404. General partner's liability.
- 53-2-405. Actions by and against partnership and partners.
- 53-2-406. Management rights of general partner.
- 53-2-407. Right of general partner and former general partner to information.
- 53-2-408. General standards of general partner's conduct.

PART 5. CONTRIBUTIONS AND DISTRIBUTIONS

- 53-2-501. Form of contribution.
- 53-2-502. Liability for contribution.
- 53-2-503. Sharing of distributions.
- 53-2-504. Interim distributions.
- 53-2-505. No distribution on account of dissociation.
- 53-2-506. Distribution in kind.
- 53-2-507. Right to distribution.
- 53-2-508. Limitations on distribution.
- 53-2-509. Liability for improper distributions.

PART 6. DISSOCIATION

- 53-2-601. Dissociation as limited partner.
- 53-2-602. Effect of dissociation as limited partner.
- 53-2-603. Dissociation as general partner.
- 53-2-604. Person's power to dissociate as general partner — Wrongful dissociation.
- 53-2-605. Effect of dissociation as general partner.
- 53-2-606. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

SECTION.

- 53-2-607. Liability to other persons of person dissociated as general partner.

PART 7. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

- 53-2-701. Partner's transferable interest.
- 53-2-702. Transfer of partner's transferable interest.
- 53-2-703. Rights of creditor of partner or transferee.
- 53-2-704. Power of estate of deceased partner.

PART 8. DISSOLUTION

- 53-2-801. Nonjudicial dissolution.
- 53-2-802. Judicial dissolution.
- 53-2-803. Winding up.
- 53-2-804. Power of general partner and person dissociated as general partner to bind partnership after dissolution.
- 53-2-805. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.
- 53-2-806. Known claims against dissolved limited partnership.
- 53-2-807. Other claims against dissolved limited partnership.
- 53-2-808. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.
- 53-2-809. Administrative dissolution.
- 53-2-810. Reinstatement following administrative dissolution.
- 53-2-811. Appeal from denial of reinstatement.
- 53-2-812. Disposition of assets — When contributions required.

PART 9. FOREIGN LIMITED PARTNERSHIPS

- 53-2-901. Governing law.
- 53-2-902. Application for certificate of authority.
- 53-2-903. Activities not constituting transacting business.
- 53-2-904. Filing of certificate of authority.
- 53-2-905. Noncomplying name of foreign limited partnership.
- 53-2-906. Revocation of certificate of authority.
- 53-2-907. Cancellation of certificate of authority — Effect of failure to have certificate.
- 53-2-908. Action by attorney general.

PART 10. ACTIONS BY PARTNERS

- 53-2-1001. Direct action by partner.
- 53-2-1002. Derivative action.

SECTION.

- 53-2-1003. Proper plaintiff.
- 53-2-1004. Pleading.
- 53-2-1005. Proceeds and expenses.

PART 11. CONVERSION AND MERGER

- 53-2-1100. Applicability of Idaho entity transactions act.
- 53-2-1101. Definitions.
- 53-2-1102. Conversion.
- 53-2-1103. Action on plan of conversion by converting limited partnership.
- 53-2-1104. Filings required for conversion — Effective date.
- 53-2-1105. Effect of conversion.
- 53-2-1106. Merger.
- 53-2-1107. Action on plan of merger by constituent limited partnership.
- 53-2-1108. Filings required for merger — Effective date.
- 53-2-1109. Effect of merger.

SECTION.

- 53-2-1110. Restrictions on approval of conversions and mergers and on relinquishing LLLP status.
- 53-2-1111. Liability of general partner after conversion or merger.
- 53-2-1112. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.
- 53-2-1113. Part not exclusive.

PART 12. MISCELLANEOUS PROVISIONS

- 53-2-1201. Uniformity of application and construction.
- 53-2-1202. Severability clause.
- 53-2-1203. Relation to electronic signatures in global and national commerce act.
- 53-2-1204. Application to existing relationships.
- 53-2-1205. Savings clause.

PART 1. GENERAL PROVISIONS

53-2-101. Short title. — This chapter may be cited as the “Uniform Limited Partnership Act.” [I.C., § 53-2-101, as added by 2006, ch. 144, § 2, p. 407.]

STATUTORY NOTES

Prior Laws. — Section 1 of S.L. 2006, ch. 144, repealed former Chapter 2, Limited Partnerships, which consisted of §§ 53-201 — 53-268, and § 2 of S.L. 2006, ch. 144 enacted a new Chapter 2, Uniform Limited Partnerships Act.

Compiler’s Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set

out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-102. Definitions. — In this chapter:

- (1) “Certificate of limited partnership” means the certificate required by section 53-2-201, Idaho Code. The term includes the certificate as amended or restated.
- (2) “Contribution,” except in the phrase “right of contribution,” means any benefit provided by a person to a limited partnership in order to become a partner or in the person’s capacity as a partner.
- (3) “Debtor in bankruptcy” means a person that is the subject of:
 - (a) An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) A comparable order under federal, state, or foreign law governing insolvency.
- (4) “Distribution” means a transfer of money or other property from a limited partnership to a partner in the partner’s capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(5) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 53-2-404(3), Idaho Code.

(6) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one (1) or more general partners and one (1) or more limited partners. The term includes a foreign limited liability limited partnership.

(7) "General partner" means:

(a) With respect to a limited partnership, a person that:

- (i) Becomes a general partner under section 53-2-401, Idaho Code; or
- (ii) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 53-2-1204(1) or (2), Idaho Code; and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(8) "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(9) "Limited partner" means:

(a) With respect to a limited partnership, a person that:

- (i) Becomes a limited partner under section 53-2-301, Idaho Code; or
- (ii) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 53-2-1204(1) or (2), Idaho Code; and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(10) "Limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one (1) or more general partners and one (1) or more limited partners, which is formed under this chapter by two (2) or more persons or becomes subject to this chapter under part 11 of this chapter or section 53-2-1204(1) or (2), Idaho Code. The term includes a limited liability limited partnership.

(11) "Partner" means a limited partner or general partner.

(12) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(14) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(15) “Principal office” means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(16) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Required information” means the information that a limited partnership is required to maintain under section 53-2-111, Idaho Code.

(18) “Sign” means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(21) “Transferable interest” means a partner’s right to receive distributions.

(22) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. [I.C., § 53-2-102, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section contains definitions applicable throughout the Act. Section 1101 provides additional definitions applicable within Article 11.

Paragraph 8[(7)](A)(i) [General partner] — A partnership agreement may vary Section 401 and provide a process or mechanism for becoming a general partner which is different from or additional to the rules stated in that section. For the purposes of this definition, a person who becomes a general partner pursuant to a provision of the partnership agreement “becomes a general partner under Section 401.”

Paragraph 10[(9)](A)(i) [Limited partner] — The Comment to Paragraph 8[(7)](A)(i) applies here as well. For the purposes of this definition, a person who becomes a limited partner pursuant to a provision of the partnership agreement “becomes a limited partner under Section 301.”

Paragraph (11)[(10)] [Limited partnership] — This definition pertains to what is commonly termed a “domestic” limited partnership. The definition encompasses: (i) limited partnerships originally formed under this Act, including limited partnerships formed under Section 1101(11) to be the surviving organization in a merger; (ii) any en-

tity that becomes subject to this Act by converting into a limited partnership under Article 11; (iii) any preexisting domestic limited partnership that elects pursuant to Section 1206(a) to become subject to this Act; and (iv) all other preexisting domestic limited partnerships when they become subject to this Act under Section 1206(b).

Following the approach of predecessor law, RULPA Section 101(7), this definition contains two substantive requirements. First, it is of the essence of a limited partnership to have two classes of partners. Accordingly, under Section 101(11) [101(10)] a limited partnership must have at least one general and one limited partner. Section 801(3)(B) and (4) [53-2-801(4) and (5)] provide that a limited partnership dissolves if its sole general partner or sole limited partner dissociates and the limited partnership fails to admit a replacement within 90 days of the dissociation. The 90 day limitation is a default rule, but, in light of Section 101(11)[101(10)], a limited partnership may not indefinitely delay “having one or more general partners and one or more limited partners.”

It is also of the essence of a limited partnership to have at least two partners. Section

101(11)[101(10)] codifies this requirement by referring to a limited partnership as “an entity ... which is formed under this [Act] by two or more persons.” Thus, while the same person may be both a general and limited partner, Section 113 (Dual Capacity), one person alone cannot be the “two persons” contemplated by this definition. However, nothing in this definition prevents two closely affiliated persons from satisfying the two person requirement.

Paragraph (13)[(12)] [Partnership agreement] — Section 110 is essential to understanding the significance of the partnership agreement. See also Section 201(d) (resolving inconsistencies between the certificate of limited partnership and the partnership agreement).

Paragraph (21)[(20)] [Transfer] — Fol-

lowing RUPA, this Act uses the words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See RUPA Section 503.

The reference to “transfer by operation of law” is significant in connection with Section 702 (Transfer of Partner’s Transferable Interest). That section severely restricts a transferee’s rights (absent the consent of the partners), and this definition makes those restrictions applicable, for example, to transfers ordered by a family court as part of a divorce proceeding and transfers resulting from the death of a partner.

Paragraph (23)[(22)] [Transferee] — See comment to Paragraph 21[(20)] for an explanation of why this Act refers to “transferee” rather than “assignee.”

53-2-103. Knowledge and notice. — (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

- (a) Knows of it;
- (b) Has received a notification of it;
- (c) Has reason to know it exists from all of the facts known to the person at the time in question; or
- (d) Has notice of it under subsection (3) or (4) of this section.

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (4) of this section, the certificate is not notice of any other fact.

(4) A person has notice of:

- (a) Another person’s dissociation as a general partner, ninety (90) days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or ninety (90) days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;
- (b) A limited partnership’s dissolution, ninety (90) days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;
- (c) A limited partnership’s termination, ninety (90) days after the effective date of a statement of termination;
- (d) A limited partnership’s conversion under part 11 of this chapter, ninety (90) days after the effective date of the articles of conversion; or
- (e) A merger under part 11 of this chapter, ninety (90) days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

- (a) Comes to the person’s attention; or

(b) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership. [I.C., § 53-2-103, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 102; RULPA Section 208.

Notice and the relationship among subsections (b), (c) and (d) — These subsections provide separate and independent avenues through which a person can have notice of a fact. A person has notice of a fact as soon as any of the avenues applies.

Example: A limited partnership dissolves and amends its certificate of limited partnership to indicate dissolution. The amendment is effective on March 1. On March 15, Person #1 has reason to know of the dissolution and therefore has "notice" of the dissolution under Section 103(b)(3) even though Section 103(d)(2) does not yet apply. Person #2 does not have actual knowledge of the dissolution until June 15. Nonetheless, under Section 103(d)(2) Person #2 has "notice" of the dissolution on May 30.

Subsection (c) — This subsection provides what is commonly called constructive notice and comes essentially verbatim from RULPA Section 208. As for the significance of constructive notice "that the partnership is a limited partnership," see *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d 997, 1001-1003 (Colo. 1998) (interpreting a comparable provision of the Colorado LLC statute and

holding the provision ineffective to change common law agency principles, including the rules relating to the liability of an agent that transacts business for an undisclosed principal).

As for constructive notice that "the persons designated in the certificate as general partners are general partners," Section 201(a)(3) requires the initial certificate of limited partnership to name each general partner, and Section 202(b) requires a limited partnership to promptly amend its certificate of limited partnership to reflect any change in the identity of its general partners. Nonetheless, it will be possible, albeit improper, for a person to be designated in the certificate of limited partnership as a general partner without having become a general partner as contemplated by Section 401. Likewise, it will be possible for a person to have become a general partner under Section 401 without being designated as a general partner in the certificate of limited partnership. According to the last clause of this subsection, the fact that a person is **not** listed as in the certificate as a general partner is **not** notice that the person is **not** a general partner. For further discussion of this point, see the Comment to Section 401.

If the partnership agreement and the public record are inconsistent, Section 201(d) applies (partnership agreement controls *inter se*; public record controls as to third parties who have relied). See also Section 202(b) (requiring the limited partnership to amend its certificate of limited partnership to keep accurate the listing of general partners), 202(c) (requiring a general partner to take corrective action when the general partner knows that the certificate of limited partnership contains false information), and 208 (imposing liability for false information in *inter alia* the certificate of limited partnership).

Subsection (d) — This subsection also provides what is commonly called constructive notice and works in conjunction with other sections of this Act to curtail the power to bind and personal liability of general partners and persons dissociated as general partners. See Sections 402, 606, 607, 804, 805, 1111, and 1112. Following RUPA (in substance, although not in form), the constructive notice begins 90 days after the effective date of the filed record. For the Act's rules on delayed effective dates, see Section 206(c).

The 90-day delay applies only to the constructive notice and not to the event described in the filed record.

Example: On March 15 X dissociates as a general partner from XYZ Limited Partnership by giving notice to XYZ. See Section 603(1). On March 20, XYZ amends its cer-

tificate of limited partnership to remove X's name from the list of general partners. See Section 202(b)(2).

X's dissociation is effective March 15. If on March 16 X purports to be a general partner of XYZ and under Section 606(a) binds XYZ to some obligation, X will be liable under Section 606(b) as a "person dissociated as a general partner."

On June 13 (90 days after March 15), the world has constructive notice of X's dissociation as a general partner. Beginning on that date, X will lack the power to bind XYZ. See Section 606(a)(2)(B) (person dissociated as a general partner can bind the limited partnership only if, *inter alia*, "at the time the other party enters into the transaction ... the other party does not have notice of the dissociation").

Constructive notice under this subsection applies to partners and transferees as well as other persons.

Subsection (e) — The phrase "person learns of it" in this subsection is equivalent to the phrase "knows of it" in subsection (b)(1).

Subsection (h) — Under this subsection and Section 302, information possessed by a person that is only a limited partner is not attributable to the limited partnership. However, information possessed by a person that is both a general partner and a limited partner is attributable to the limited partnership. See Section 113 (Dual Capacity).

53-2-104. Nature, purpose and duration of entity. — (1) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration. [I.C., § 53-2-104, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — Acquiring or relinquishing an LLLP shield changes only the rules governing a general partner's liability for subsequently incurred obligations of the limited partnership. The underlying entity is unaffected.

Subsection (b) — In contrast with RULPA Section 106, this Act does not require a limited partnership to have a business purpose. However, many of the Act's default rules presuppose at least a profit-making purpose. See, e.g., Section 503 (providing for the sharing of distributions in proportion to the value of contributions), 701 (defining a transferable interest in terms of the right to receive distributions), 801 (allocating the right to consent

to cause or avoid dissolution in proportion to partners' rights to receive distributions), and 812 (providing that, after a dissolved limited partnership has paid its creditors, "[a]ny surplus remaining ... must be paid in cash as a distribution" to partners and transferees). If a limited partnership is organized for an essentially non-pecuniary purpose, the organizers should carefully review the Act's default rules and override them as necessary via the partnership agreement.

Subsection (c) — The partnership agreement has the power to vary this subsection, either by stating a definite term or by specifying an event or events which cause dissolution. Sections 110(a) and 801(1). Section 801

also recognizes several other occurrences that cause dissolution. Thus, the public record pertaining to a limited partnership will not necessarily reveal whether the limited partnership actually has a perpetual duration.

The public record might also fail to reveal whether the limited partnership has in fact dissolved. A dissolved limited partnership may amend its certificate of limited partnership to indicate dissolution but is not required to do so. Section 803(b)(1).

Predecessor law took a somewhat different

approach. RULPA Section 201(4) required the certificate of limited partnership to state “the latest date upon which the limited partnership is to dissolve.” Although RULPA Section 801(2) provided for a limited partnership to dissolve “upon the happening of events specified in writing in the partnership agreement,” RULPA Section 203 required the limited partnership to file a certificate of cancellation to indicate that dissolution had occurred.

53-2-105. Powers. — A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership. [I.C., § 53-2-105, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This Act omits as unnecessary any detailed list of specific powers. The power to sue and be sued is mentioned specifically so that Section 110(b)(1) can prohibit the partnership agreement from varying that power. The

power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has standing to enforce the partnership agreement.

53-2-106. Governing law. — The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership. [I.C., § 53-2-106, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

To partially define its scope, this section uses the phrase “relations among the partners of a limited partnership and between the partners and the limited partnership.” Section 110(a) uses essentially identical language in defining the proper realm of the partnership agreement: “relations among the partners and between the partners and the partnership.”

Despite the similarity of language, this section has no bearing on the power of a partnership agreement to vary other provisions of this Act. It is quite possible for a provision of this Act to involve “relations among the partners of a limited partnership and between the partners and the limited partnership” and thus come within this section, and yet not be subject to variation by the partnership agreement. Although Section 110(a) grants plenary authority to the partnership agreement to regulate “relations among the partners and between the partners and the partnership,” that authority is subject to Section 110(b).

For example, Section 408 (General Standards of General Partners’s Conduct) certainly involves “relations among the partners of a limited partnership and between the partners and the limited partnership.” Therefore, according to this section, Section 408 applies to a limited partnership formed or otherwise subject to this Act. Just as certainly, Section 408 pertains to “relations among the partners and between the partners and the partnership” for the purposes of Section 110(a), and therefore the partnership agreement may properly address matters covered by Section 408. However, Section 110(b)(5), (6), and (7) limit the power of the partnership agreement to vary the rules stated in Section 408. See also, e.g., Section 502(c) (stating creditor’s rights, which are protected under Section 110(b)(13) from being restricted by the partnership agreement) and Comment to Section 509.

This section also applies to “the liability of partners as partners for an obligation of the

limited partnership." The phrase "as partners" contemplates the liability shield for limited partners under Section 303 and the rules for general partner liability stated in Section 404. Other grounds for liability can be supplied by other law, including the law of some other jurisdiction. For example, a partner's contractual guaranty of a limited partnership obligation might well be governed by the law of some other jurisdiction.

Transferees derive their rights and status under this Act from partners and accordingly this section applies to the relations of a transferee to the limited partnership.

The partnership agreement may not vary the rule stated in this section. See Section 110(b)(2).

53-2-107. Supplemental principles of law — Rate of interest. —

(1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 28-22-104(1), Idaho Code. [I.C., § 53-2-107, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — This language comes from RUPA Section 104 and does not address an important question raised by the de-linking of this Act from the UPA and RUPA — namely, to what extent is the case law of general partnerships relevant to limited partnerships governed by this Act?

Predecessor law, RULPA Section 403, expressly equated the rights, powers, restrictions, and liabilities of a general partner in a limited partnership with the rights, powers, restrictions, and liabilities of a partner in a general partnership. This Act has no compa-

parable provision. Therefore, a court should not assume that a case concerning a general partnership is automatically relevant to a limited partnership governed by this Act. A general partnership case may be relevant by analogy, especially if (1) the issue in dispute involves a provision of this Act for which a comparable provision exists under the law of general partnerships; and (2) the fundamental differences between a general partnership and limited partnership are immaterial to the disputed issue.

53-2-108. Name. — (1) The name of a limited partnership may contain the name of any partner.

(2) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(3) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "L.P." or "LP."

(4) Unless authorized by subsection (5) of this section, the name of a limited partnership must not falsely imply government affiliation and must be distinguishable in the records of the secretary of state from:

(a) The name of each person other than an individual incorporated, organized, or authorized to transact business in this state; and

(b) Each name reserved under section 53-2-109, Idaho Code, or other state law allowing the reservation or registration of business names.

(5) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4) of this section. The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

- (a) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) of this section and is distinguishable in the records of the secretary of state from the name applied for;
- (b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or
- (c) The applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:
- (i) Has merged into the applicant;
 - (ii) Has been converted into the applicant; or
 - (iii) Has transferred substantially all of its assets, including the conflicting name, to the applicant.
- (6) Subject to section 53-2-905, Idaho Code, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority. [I.C., § 53-2-108, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — Predecessor law, RULPA Section 102, prohibited the use of a limited partner's name in the name of a limited partnership except in unusual circumstances. That approach derived from the 1916 Uniform Limited Partnership Act and has become antiquated. In 1916, most business organizations were either unshielded (e.g., general partnerships) or partially shielded (e.g., limited partnerships); and it was reasonable for third parties to believe that an individual whose own name appeared in the name of a business would "stand behind" the business. Today most businesses have a full shield (e.g., corporations, limited liability companies, most limited liability partnerships), and corporate, LLC and LLP statutes generally

pose no barrier to the use of an owner's name in the name of the entity. This Act eliminates RULPA's restriction and puts limited partnerships on equal footing with these other "shielded" entities.

Subsection (d)(1) — If a sole proprietor registers or reserves a business name under a fictitious name statute, that name comes within this provision. For the purposes of this provision, a sole proprietor doing business under a registered or reserved name is a "person other than an individual."

Subsection (f) — Section 905 permits a foreign limited partnership to obtain a certificate of authority under an alternate name if the foreign limited partnership's actual name does not comply with this section.

53-2-109. Reservation of name. — (1) The exclusive right to the use of a name that complies with section 53-2-108, Idaho Code, may be reserved by:

- (a) A person intending to organize a limited partnership under this chapter and to adopt the name;
- (b) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;
- (c) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;
- (d) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

- (e) A foreign limited partnership formed under the name; or
- (f) A foreign limited partnership formed under a name that does not comply with section 53-2-108(2) or (3), Idaho Code, but the name reserved under this paragraph (f) may differ from the foreign limited partnership's name only to the extent necessary to comply with section 53-2-108(2) and (3), Idaho Code.

(2) A person may apply to reserve a name under subsection (1) of this section by delivering to the secretary of state for filing an application that states the name to be reserved and the paragraph of subsection (1) of this section which applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for one hundred twenty (120) days.

(3) An applicant that has reserved a name pursuant to subsection (2) of this section may reserve the same name for additional one hundred twenty (120) day periods. A person having a current reservation for a name may not apply for another one hundred twenty (120) day period for the same name until ninety (90) days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the paragraph of subsection (1) of this section which applies to the other person. Subject to section 53-2-206(3), Idaho Code, the transfer is effective when the secretary of state files the notice of transfer. [I.C., § 53-2-109, as added by 2006, ch. 144, § 2, p. 407.]

53-2-110. Effect of partnership agreement — Nonwaivable provisions. — (1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

- (a) Vary a limited partnership's power under section 53-2-105, Idaho Code, to sue, be sued, and defend in its own name;
- (b) Vary the law applicable to a limited partnership under section 53-2-106, Idaho Code;
- (c) Vary the requirements of section 53-2-204, Idaho Code;
- (d) Vary the information required under section 53-2-111, Idaho Code, or unreasonably restrict the right to information under section 53-2-304 or 53-2-407, Idaho Code, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
- (e) Eliminate the duty of loyalty under section 53-2-408, Idaho Code, but the partnership agreement may:

- (i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

- (ii) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (f) Unreasonably reduce the duty of care under section 53-2-408(3), Idaho Code;
- (g) Eliminate the obligation of good faith and fair dealing under sections 53-2-305(2) and 53-2-408(4), Idaho Code, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (h) Vary the power of a person to dissociate as a general partner under section 53-2-604(1), Idaho Code, except to require that the notice under section 53-2-603(1), Idaho Code, be in a record;
- (i) Vary the power of a court to decree dissolution in the circumstances specified in section 53-2-802, Idaho Code;
- (j) Vary the requirement to wind up the partnership's business as specified in section 53-2-803, Idaho Code;
- (k) Unreasonably restrict the right to maintain an action under part 10 of this chapter;
- (l) Restrict the right of a partner under section 53-2-1110(1), Idaho Code, to approve a conversion or merger or the right of a general partner under section 53-2-1110(2), Idaho Code, to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or
- (m) Restrict rights under this chapter of a person other than a partner or a transferee. [I.C., § 53-2-110, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 103.

Subject only to subsection (b), the partnership agreement has plenary power to structure and regulate the relations of the partners *inter se*. Although the certificate of limited partnership is a limited partnership's foundational document, among the partners the partnership agreement controls. See Section 201(d).

The partnership agreement has the power to control the manner of its own amendment. In particular, a provision of the agreement prohibiting oral modifications is enforceable, despite any common law antagonism to "no oral modification" provisions. Likewise, a partnership agreement can impose "made in a record" requirements on other aspects of the partners' relationship, such as requiring consents to be made in a record and signed, or rendering unenforceable oral promises to make contributions or oral understandings as to "events upon the happening of which the limited partnership is to be dissolved," Section 111(9)(D). See also Section 801(1).

Subsection (b)(3) — The referenced section states who must sign various documents.

Subsection (b)(4) — In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting access to or use of the names and addresses of limited partners is not per se unreasonable.

Under this Act, general and limited partners have sharply different roles. A restriction that is reasonable as to a limited partner is not necessarily reasonable as to a general partner.

Sections 304(g) and 407(f) authorize the limited partnership (as distinguished from the partnership agreement) to impose restrictions on the use of information. For a comparison of restrictions contained in the partnership agreement and restrictions imposed unilaterally by the limited partnership, see the Comment to Section 304(g).

Subsection (b)(5)(A) — It is not per se manifestly unreasonable for the partnership agreement to permit a general partner to

compete with the limited partnership.

Subsection (b)(5)(B) — The Act does not require that the authorization or ratification be by **disinterested** partners, although the partnership agreement may so provide. The Act does require that the disclosure be made to all partners, even if the partnership agreement excludes some partners from the authorization or ratification process. An interested partner that participates in the authorization or ratification process is subject to the obligation of good faith and fair dealing. Sections 305(b) and 408(d).

Subsection (b)(8) — This restriction applies only to the power of a person to dissociate as a general partner. The partnership agreement may eliminate the power of a person to dissociate as a limited partner.

Subsection (b)(9) — This provision should not be read to limit a partnership agreement's power to provide for arbitration. For example, an agreement to arbitrate all disputes — including dissolution disputes — is enforceable. Any other interpretation would put this Act at odds with federal law. See *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (holding that the Federal Arbitration Act preempts state statutes that seek to invalidate agreements to arbitrate) and *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265 (1995) (same). This provision does prohibit any narrowing of the substantive grounds for judicial dissolution as stated in Section 802.

Example: A provision of a partnership agreement states that no partner may obtain judicial dissolution without showing that a general partner is in material breach of the partnership agreement. The provision is ineffective to prevent a court from

ordering dissolution under Section 802.

Subsection (b)(11) — Section 1001 codifies a partner's right to bring a direct action, and the rest of Article 10 provides for derivative actions. The partnership agreement may not restrict a partner's right to bring either type of action if the effect is to undercut or frustrate the duties and rights protected by Section 110(b).

The reasonableness of a restriction on derivative actions should be judged in light of the history and purpose of derivative actions. They originated as an equitable remedy, intended to protect passive owners against management abuses. A partnership agreement may not provide that all derivative claims will be subject to final determination by a special litigation committee appointed by the limited partnership, because that provision would eliminate, not merely restrict, a partner's right to bring a derivative action.

Subsection (b)(12) — Section 1110 imposes special consent requirements with regard to transactions that might make a partner personally liable for entity debts.

Subsection (b)(13) — The partnership agreement is a contract, and this provision reflects a basic notion of contract law — namely, that a contract can **directly** restrict rights only of parties to the contract and of persons who derive their rights from the contract. A provision of a partnership agreement can be determined to be unenforceable against third parties under paragraph (b)(13) without therefore and automatically being unenforceable *inter se* the partners and any transferees. How the former determination affects the latter question is a matter of other law.

53-2-111. Required information. — A limited partnership shall maintain at its designated office the following information:

- (1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;
- (2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;
- (3) A copy of any filed articles of conversion or merger;
- (4) A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;
- (5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;
- (6) A copy of any financial statement of the limited partnership for the three (3) most recent years;

(7) A copy of the three (3) most recent annual reports delivered by the limited partnership to the secretary of state pursuant to section 53-2-210, Idaho Code;

(8) A copy of any record made by the limited partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(a) The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(b) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up. [I.C., § 53-2-111, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 105.

Sections 304 and 407 govern access to the information required by this section, as well as to other information pertaining to a limited partnership.

Paragraph (5) — This requirement applies to superseded as well as current agreements and amendments. An agreement or amendment is “made in a record” to the extent the agreement is “integrated” into a record and consented to in that memorialized form. It is possible for a partnership agreement to be made in part in a record and in part otherwise. See Comment to Section 110. An oral agreement that is subsequently inscribed in a record (but not consented to as such) was not “made in a record” and is not covered by paragraph (5). However, if the limited partnership happens to have such a record, Section 304(b) might and Section 407(a)(2) will provide a right of access.

Paragraph (8) — This paragraph does not require a limited partnership to make a record of consents given and votes taken. However, if the limited partnership has made such a record, this paragraph requires that the limited partnership maintain the record for three years. The requirement applies to any record made by the limited partnership, not just to records made contemporaneously with the giving of consent or voting. The three year period runs from when the record was made and not from when the consent was given or vote taken.

Paragraph (9) — Information is “contained in a partnership agreement made in a record” only to the extent that the information is “integrated” into a record and, in that memorialized form, has been consented to as part of the partnership agreement.

This paragraph is not a statute of frauds provision. For example, failure to comply with paragraph (9)(A) or (B) does not render unenforceable an oral promise to make a contribution. Likewise, failure to comply with paragraph (9)(D) does not invalidate an oral term of the partnership specifying “events upon the happening of which the limited partnership is to be dissolved and its activities wound up.” See also Section 801(1).

Obversely, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (9)(A) or (B) does not prove that a person has actually promised to make a contribution. Likewise, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (9)(D) does not prove that the partnership agreement actually includes the specified events as causes of dissolution.

Consistent with the partnership agreement’s plenary power to structure and regulate the relations of the partners *inter se*, a partnership agreement can impose “made in a record” requirements which render unenforceable oral promises to make contributions or oral understandings as to “events upon the happening of which the limited partnership is

to be dissolved.” See Comment to Section 110.

Paragraph (9)(A) and (B) — Often the partnership agreement will state in record form the value of contributions made and promised to be made. If not, these provisions require that the value be stated in a record maintained as part of the limited partnership’s required information. The Act does not authorize the limited partnership or the general partners to set the value of a contribution without the concurrence of the person who

has made or promised the contribution, although the partnership agreement itself can grant that authority.

Paragraph (9)(C) — The information required by this provision is essential for determining what happens to the transferable interests of a person that is both a general partner and a limited partner and that dissociates in one of those capacities but not the other. See Sections 602(3) and 605(5).

53-2-112. Business transactions of partner with partnership. — A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner. [I.C., § 53-2-112, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 107. See also RUPA Section 404(f) and ULLCA Section 409(f).

This section has no impact on a general partner’s duty under Section 408(b)(2) (duty of loyalty includes refraining from acting as or for an adverse party) and means rather that this Act does not discriminate against a creditor of a limited partnership that happens also to be a partner. See, e.g., *BT-I v. Equitable*

Life Assurance Society of the United States, 75 Cal. App. 4th 1406, 1415, 89 Cal. Rptr. 2d 811, 814 (Cal. App. 4 Dist. 1999). and *SEC v. DuPont, Homsey & Co.*, 204 F. Supp. 944, 946 (D. Mass. 1962), vacated and remanded on other grounds, 334 F.2d 704 (1st Cir. 1964). This section does not, however, override other law, such as fraudulent transfer or conveyance acts.

53-2-113. Dual capacity. — A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for limited partners. [I.C., § 53-2-113, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 404, redrafted for reasons of style.

53-2-114. Registered office and registered agent. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 53-2-114, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L.

2007, ch. 314, § 46. See comparable provisions at § 30-401 et seq.

53-2-115. Change of registered office or registered agent. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 53-2-115, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L.

2007, ch. 314, § 46. See comparable provisions at § 30-401 et seq.

53-2-116. Resignation of registered agent. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 53-2-116, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L.

2007, ch. 314, § 46. See comparable provisions at § 30-401 et seq.

53-2-117. Service of process. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 53-2-117, as added by 2006,

ch. 144, § 2, p. 407, was repealed by S.L. 2007, ch. 314, § 46. See § 30-401 et seq.

53-2-118. Consent and proxies of partners. — Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact. [I.C., § 53-2-118, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 404(d) and (e). This Act imposes no meeting requirement and does not distinguish among oral, record,

express and tacit consent. The partnership agreement may establish such requirements and make such distinctions.

PART 2. FORMATION — CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-201. Formation of limited partnership — Certificate of limited partnership. — (1) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate must state:

- (a) The name of the limited partnership, which must comply with section 53-2-108, Idaho Code;
- (b) The information required by section 30-405(1), Idaho Code;

- (c) The name and mailing address of each general partner;
- (d) Whether the limited partnership is a limited liability limited partnership; and
- (e) Any additional information required by part 11 of this chapter.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section 53-2-110(2), Idaho Code, in a manner inconsistent with that section.

(3) If there has been substantial compliance with subsection (1) of this section, subject to section 53-2-206(3), Idaho Code, a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

- (a) The partnership agreement prevails as to partners and transferees; and
- (b) The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment. [I.C., § 53-2-201, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 47, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (1)(b), which formerly read: “The mailing address of the

initial principal office and the name and street address of the initial registered agent at the registered office.”

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 201.

A limited partnership is a creature of statute, and this section governs how a limited partnership comes into existence. A limited partnership is formed only if (i) a certificate of limited partnership is prepared and delivered to the specified public official for filing, (ii) the public official files the certificate, and (iii) the certificate, delivery and filing are in “substantial compliance” with the requirements of subsection (a). Section 206(c) governs when a limited partnership comes into existence.

Despite its foundational importance, a certificate of limited partnership is far less powerful than a corporation’s articles of incorporation. Among partners and transferees, for example, the partnership agreement is paramount. See Section 201(d).

Subsection (a)(1) — Section 108 contains name requirements. To be acceptable for filing, a certificate of limited partnership must state a name for the limited partnership which complies with Section 108.

Subsection (a)(3) — This provision should be read in conjunction with Section 103(c) and

Section 401. See the Comment to those sections.

Subsection (a)(4) — This Act permits a limited partnership to be a limited liability limited partnership (“LLLL”), and this provision requires the certificate of limited partnership to state whether the limited partnership is an LLLP. The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP.

Subject to Sections 406(b)(2) and 1110, a limited partnership may amend its certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership. An amendment deleting such a statement must be accompanied by an amendment stating that the limited partnership is **not** a limited liability limited partnership. Section 201(a)(4) does not permit a certificate of limited partnership to be silent on this point, except for pre-existing partnerships that become subject to this Act under Section 1206. See Section 1206(c)(2).

Subsection (d) — Source: ULLCA Section 203(c).

A limited partnership is a creature of contract as well as a creature of statute. It will be possible, albeit improper, for the partnership agreement to be inconsistent with the certificate of limited partnership or other specified public filings relating to the limited partnership. For those circumstances, this subsection provides the rule for determining which source of information prevails.

For partners and transferees, the partnership agreement is paramount. For third parties seeking to invoke the public record, actual knowledge of that record is necessary and notice under Section 103(c) or (d) is irrelevant. A third party wishing to enforce the public record over the partnership agreement must show reasonable reliance on the public record, and reliance presupposes knowledge.

This subsection does not expressly cover a situation in which (i) one of the specified filed records contains information in addition to, but not inconsistent with, the partnership agreement, and (ii) a person, other than a partner or transferee, detrimentally relies on the additional information. However, the policy reflected in this subsection seems equally applicable to that situation.

Responsibility for maintaining a limited partnership's public record rests with the general partner or partners. Section 202(c). A general partner's failure to meet that responsibility can expose the general partner to liability to third parties under Section 208(a)(2) and might constitute a breach of the general partner's duties under Section 408. In addition, an aggrieved person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).

53-2-202. Amendment or restatement of certificate. — (1) In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to part 11 of this chapter, articles of merger stating:

- (a) The name of the limited partnership;
- (b) The date of filing of its initial certificate; and
- (c) The changes the amendment makes to the certificate as most recently amended or restated.

(2) A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

- (a) The admission of a new general partner;
- (b) The dissociation of a person as a general partner; or
- (c) The appointment of a person to wind up the limited partnership's activities under section 53-2-803(3) or (4), Idaho Code.

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

- (a) Cause the certificate to be amended; or
- (b) If appropriate, deliver to the secretary of state for filing a statement of correction pursuant to section 53-2-207 or 30-408, Idaho Code.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(5) A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

(6) Subject to section 53-2-206(3), Idaho Code, an amendment or restated certificate is effective when filed by the secretary of state. [I.C., § 53-2-202, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 48, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (3)(b), deleted “of change pursuant to section 53-2-115, Idaho

Code, or a statement” following “statement,” and inserted “or 30-408.”

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 202.

Subsection (b) — This subsection lists changes in circumstances which require an amendment to the certificate. Neither a statement of change, Section 115, nor the annual report, Section 210(e), suffice to report the addition or deletion of a general partner or the appointment of a person to wind up a limited partnership that has no general partner.

This subsection states an obligation of the limited partnership. However, so long as the limited partnership has at least one general partner, the general partner or partners are responsible for managing the limited partnership's activities. Section 406(a). That management responsibility includes maintaining accuracy in the limited partnership's public record. Moreover, subsection (c) imposes direct responsibility on any general partner that knows that the filed certificate of limited

partnership contains false information.

Acquiring or relinquishing LLLP status also requires an amendment to the certificate. See Sections 201(a)(4), 406(b)(2), and 1110(b)(2).

Subsection (c) — This provision imposes an obligation directly on the general partners rather than on the limited partnership. A general partner's failure to meet that responsibility can expose the general partner to liability to third parties under Section 208(a)(2) and might constitute a breach of the general partner's duties under Section 408. In addition, an aggrieved person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).

Subsection (d) — A limited partnership that desires to change its name will have to amend its certificate of limited partnership. The new name will have to comply with Section 108. See Section 201(a)(1).

53-2-203. Statement of termination. — A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate of limited partnership; and
- (3) Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 53-2-803(3) or (4), Idaho Code. [I.C., § 53-2-203, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Under Section 103(d)(3), a filed statement of termination provides constructive notice, 90 days after the statement's effective date, that the limited partnership is terminated. That notice effectively terminates any apparent authority to bind the limited partnership.

However, this section is permissive. Therefore, it is not possible to use Section 205

(Signing and Filing Pursuant to Judicial Order) to cause a statement of termination to be filed.

This section differs from predecessor law, RULPA Section 203, which required the filing of a certificate of cancellation when a limited partnership dissolved.

53-2-204. Signing of records. — (1) Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

- (a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.
- (b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.
- (c) An amendment designating as general partner a person admitted under section 53-2-801(4), Idaho Code, following the dissociation of a limited partnership's last general partner must be signed by that person.

- (d) An amendment required by section 53-2-803(3), Idaho Code, following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.
- (e) Any other amendment must be signed by:
- (i) At least one (1) general partner listed in the certificate;
 - (ii) Each other person designated in the amendment as a new general partner; and
 - (iii) Each person that the amendment indicates has dissociated as a general partner, unless:
 - (A) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (B) The person has previously delivered to the secretary of state for filing a statement of dissociation.
- (f) A restated certificate of limited partnership must be signed by at least one (1) general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.
- (g) A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 53-2-803(3) or (4), Idaho Code, to wind up the dissolved limited partnership's activities.
- (h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.
- (i) Articles of merger must be signed as provided in section 53-2-1108(1), Idaho Code.
- (j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one (1) general partner listed in the certificate.
- (k) A statement by a person pursuant to section 53-2-605(1)(d), Idaho Code, stating that the person has dissociated as a general partner must be signed by that person.
- (l) A statement of withdrawal by a person pursuant to section 53-2-306, Idaho Code, must be signed by that person.
- (m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one (1) general partner of the foreign limited partnership.
- (n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.
- (2) Any person may sign by an attorney in fact any record to be filed pursuant to this chapter. [I.C., § 53-2-204, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 205.

This section pertains only to signing requirements and implies nothing about ap-

proval requirements. For example, Section 204(a)(2) requires that an amendment changing a limited partnership's LLLP status be

signed by all **general** partners listed in the certificate, but under Section 406(b)(2) **all** partners must consent to that change unless otherwise provided in the partnership agreement.

A person who signs a record without ascertaining that the record has been properly authorized risks liability under Section 208.

Subsection (a) — The recurring reference to general partners “listed in the certificate”

recognizes that a person might be admitted as a general partner under Section 401 without immediately being listed in the certificate of limited partnership. Such persons may have rights, powers and obligations despite their unlisted status, but they cannot act as general partners for the purpose of affecting the limited partnership's public record. See the Comment to Section 103(c) and the Comment to Section 401.

53-2-205. Signing and filing pursuant to judicial order. — (1) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the court to order:

- (a) The person to sign the record;
- (b) Deliver the record to the secretary of state for filing; or
- (c) The secretary of state to file the record unsigned.

(2) If the person aggrieved under subsection (1) of this section is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) of this section may seek the remedies provided in subsection (1) of this section in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed. [I.C., § 53-2-205, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 205.

53-2-206. Delivery to and filing of records by secretary of state — Effective time and date. — (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. The secretary of state shall provide forms which may be used for filing records. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the record and:

- (a) For a statement of dissociation, send:
 - (i) A copy of the filed statement and a receipt for the fees to the person which the statement indicates has dissociated as a general partner; and
 - (ii) A copy of the filed statement and receipt to the limited partnership;
- (b) For a statement of withdrawal, send:
 - (i) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed; and
 - (ii) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership; and
- (c) For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in section 53-2-207, Idaho Code, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed. [I.C., § 53-2-206, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 49, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, “53-2-207” in the introductory paragraph in subsection (3).
by ch. 314, deleted “53-2-116 and” preceding

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 206.

In order for a record prepared by a private person to become part of the public record under this Act, (i) someone must put a properly prepared version of the record into the possession of the public official specified in the Act as the appropriate filing officer, and (ii) that filing officer must determine that the record complies with the filing requirements of this Act and then officially make the record part of the public record. This Act refers to the first step as *delivery to the [Secretary of State] for filing* and refers to the second step as *filing*. Thus, under this Act “filing” is an official act.

Subsection (a) — The caption need only indicate the title of the record; e.g., Certificate of Limited Partnership, Statement of Change for Limited Partnership.

Filing officers typically note on a filed record the fact, date and time of filing. The copies provided by the filing officer under this subsection should contain that notation.

This Act does not provide a remedy if the filing officer wrongfully fails or refuses to file a record.

Subsection (c) — This subsection allows most records to have a delayed effective date, up to 90 days after the date the record is filed by the filing officer. A record specifying a longer delay will **not** be rejected. Instead, under paragraph (c)(3) and (4), the delayed effective date is adjusted by operation of law to the “ninetieth day after the record is filed.” The Act does not require the filing officer to notify anyone of the adjustment.

53-2-207. Correcting filed record. — (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state, if at the time of filing the record contained

false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

- (a) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;
- (b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and
- (c) Correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

- (a) For the purposes of section 53-2-103(3) and (4), Idaho Code; and
- (b) As to persons relying on the uncorrected record and adversely affected by the correction.

(4) No filing may be effective prior to the time it is received and filed by the secretary of state. [I.C., § 53-2-207, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 207.

A statement of correction is appropriate only to correct inaccuracies that existed or signatures that were defective “at the time of filing.” A statement of correction may not be used to correct a record that was accurate when filed but has become inaccurate due to subsequent events.

Subsection (c) — Generally, a statement of correction “relates back.” However, there is no retroactive effect: (1) for the purposes of constructive notice under Section 103(c) and (d); and (2) against persons who have relied on the uncorrected record and would be adversely affected if the correction related back.

53-2-208. Liability for false information in filed record. — (1) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

- (a) A person that signed the record, or caused another to sign it on the person’s behalf, and knew the information to be false at the time the record was signed; and
- (b) A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 53-2-202, Idaho Code, file a petition pursuant to section 53-2-205, Idaho Code, or deliver to the secretary of state for filing a statement of change pursuant to section 30-408, Idaho Code, or a statement of correction pursuant to section 53-2-207, Idaho Code.

(2) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true. [I.C., § 53-2-208, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 50, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “section 30-408” for “section 53-2-115” in subsection (1)(b).

COMMENT TO OFFICIAL TEXT

This section pertains to both limited partnerships and foreign limited partnerships.

LLLP status is irrelevant to this section. The LLLP shield protects only to the extent that (i) the obligation involved is an obligation of the limited partnership or foreign limited partnership, and (ii) a partner is claimed to be liable for that obligation by reason of being a partner. This section does not address the obligations of a limited partnership or foreign limited partnership and instead imposes direct liability on signers and general partners.

Subsection (a) — This subsection’s liability rules apply only to records (i) created by private persons (“delivered to the [Secretary of State] for filing”), (ii) which actually become part of the public record (“filed by the [Secretary of State]”). This subsection does not pre-

empt other law, which might provide remedies for misleading information contained, for example, in a record that is delivered to the filing officer for filing but withdrawn before the filing officer takes the official action of filing the record.

Records filed under this Act are signed subject to the penalties for perjury. See subsection (b). This subsection therefore does not require a party who relies on a record to demonstrate that the reliance was reasonable. Contrast Section 201(d)(2), which provides that, if the partnership agreement is inconsistent with the public record, the public record prevails in favor of a person that is neither a partner nor a transferee and that reasonably relied on the record.

53-2-209. Certificate of existence or authorization. — (1) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of existence for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state:

- (a) The limited partnership’s name;
- (b) That it was duly formed under the laws of this state and the date of formation;
- (c) Whether all fees, taxes, and penalties due to the secretary of state under this chapter or other law have been paid;
- (d) Whether the limited partnership’s most recent annual report required by section 53-2-210, Idaho Code, has been filed by the secretary of state;
- (e) Whether the secretary of state has administratively dissolved the limited partnership;
- (f) Whether the limited partnership’s certificate of limited partnership has been amended to state that the limited partnership is dissolved;
- (g) That a statement of termination has not been filed by the secretary of state; and
- (h) Other facts of record in the office of the secretary of state which may be requested by the applicant.

(2) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

- (a) The foreign limited partnership's name and any alternate name adopted under section 53-2-905(1), Idaho Code, for use in this state;
- (b) That it is authorized to transact business in this state;
- (c) Whether all fees, taxes, and penalties due to the secretary of state under this chapter or other law have been paid;
- (d) Whether the foreign limited partnership's most recent annual report required by section 53-2-210, Idaho Code, has been filed by the secretary of state;
- (e) That the secretary of state has not revoked its certificate of authority and has not filed a notice of cancellation; and
- (f) Other facts of record in the office of the secretary of state which may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state. [I.C., § 53-2-209, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 208.

A certificate of existence can reveal only information present in the public record, and under this Act significant information bearing on the status of a limited partnership may be outside the public record. For example, while this Act provides for a limited partnership to have a perpetual duration, Section 104(c), the partnership agreement may set a definite term or designate particular events whose occurrence will cause dissolution. Section 801(1). Dissolution is also possible by consent,

Section 801(2), and, absent a contrary provision in the partnership agreement, will at least be at issue whenever a general partner dissociates. Section 801(3). Nothing in this Act requires a limited partnership to deliver to the filing officer for filing a record indicating that the limited partnership has dissolved.

A certificate of authorization furnished under this section is different than a certificate of authority filed under Section 904.

53-2-210. Annual report for secretary of state. — (1) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that states:

- (a) The name of the limited partnership or foreign limited partnership;
 - (b) The information required by section 30-405(1), Idaho Code;
 - (c) In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under section 53-2-905(1), Idaho Code; and
 - (d) The name and mailing address of one (1) or more general partners.
- (2) Information in an annual report must be current as of the date the annual report is delivered to the secretary of state for filing.
- (3) No annual report need be filed during the first year after a limited partnership is formed or authorized to transact business in this state. The first and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a limited partnership was originally formed or a foreign limited partnership was initially authorized to transact business.

(4) If an annual report does not contain the information required in subsection (1) of this section, the secretary of state shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the secretary of state within thirty (30) days after the effective date of the notice, it is timely delivered.

(5) If a filed annual report contains information provided under subsection (1)(b) of this section which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the annual report is considered a statement of change under section 30-408, Idaho Code, provided the change in information is with the consent of any new registered agent. [I.C., § 53-2-210, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 51, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (1)(b), which formerly read: “The mailing address of its principal office and the name and street address of its registered agent and registered office in this state”; and in subsection (5),

substituted “information provided under subsection (1)(b) of this section” for “an address of a registered office or the name or address of a registered agent,” and updated the section reference.

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 211.

Subsection (d) — This subsection’s rule affects only Section 809(a)(2) (late filing of annual report grounds for administrative dissolution) and any late fees that the filing officer might have the right to impose. For the

purposes of subsection (e), the annual report functions as a statement of change only when “filed” by the filing officer. Likewise, a person cannot rely on subsection (d) to escape liability arising under Section 208.

PART 3. LIMITED PARTNERS

STATUTORY NOTES

Compiler’s Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-301. Becoming limited partner. — A person becomes a limited partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a conversion or merger under part 11 of this chapter;

or

- (3) With the consent of all the partners. [I.C., § 53-2-301, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 301.

Although Section 801(4) contemplates the admission of a limited partner to avoid dissolution, that provision does not itself authorize

the admission. Instead, this section controls. Contrast Section 801(3)(B), which itself authorizes the admission of a general partner in order to avoid dissolution.

53-2-302. No right or power as limited partner to bind limited partnership. — A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership. [I.C., § 53-2-302, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

In this respect a limited partner is analogous to a shareholder in a corporation; status as owner provides neither the right to manage nor a reasonable appearance of that right.

The phrase “as a limited partner” is intended to recognize that: (i) this section does not disable a general partner that also owns a limited partner interest, (ii) the partnership agreement may as a matter of contract allocate managerial rights to one or more limited partners; and (iii) a separate agreement can empower and entitle a person that is a limited partner to act for the limited partnership in another capacity; *e.g.*, as an agent. See Comment to Section 305.

The fact that a limited partner *qua* limited partner has no power to bind the limited partnership means that, subject to Section 113 (Dual Capacity), information possessed by a limited partner is not attributed to the limited partnership. See Section 103(h).

This Act specifies various circumstances in which limited partners have consent rights, including:

- admission of a limited partner, Section 301(3)
- admission of a general partner, Section 401(4)
- amendment of the partnership agreement, Section 406(b)(1)
- the decision to amend the certificate of limited partnership so as to obtain or relinquish LLLP status, Section 406(b)(2)

- the disposition of all or substantially all of the limited partnership's property, outside the ordinary course, Section 406(b)(3)
- the compromise of a partner's obligation to make a contribution or return an improper distribution, Section 502(c)
- expulsion of a limited partner by consent of the other partners, Section 601(b)(4)
- expulsion of a general partner by consent of the other partners, Section 603(4)
- redemption of a transferable interest subject to charging order, using limited partnership property, Section 703(c)(3)
- causing dissolution by consent, Section 801(2)
- causing dissolution by consent following the dissociation of a general partner, when at least one general partner remains, Section 801(3)(A)
- avoiding dissolution and appointing a successor general partner, following the dissociation of the sole general partner, Section 801(3)(B)
- appointing a person to wind up the limited partnership when there is no general partner, Section 803(C)
- approving, amending or abandoning a plan of conversion, Section 1103(a) and (b)(2)
- approving, amending or abandoning a plan of merger, Section 1107(a) and (b)(2).

53-2-303. No liability as limited partner for limited partnership obligations. — An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership. [I.C., § 53-2-303, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section provides a full, status-based liability shield for each limited partner, “even if the limited partner participates in the management and control of the limited partnership.” The section thus eliminates the so-called “control rule” with respect to personal liability for entity obligations and brings limited partners into parity with LLC members, LLP partners and corporate shareholders.

The “control rule” first appeared in an uniform act in 1916, although the concept is much older. Section 7 of the original Uniform Limited Partnership Act provided that “A limited partner shall not become liable as a general partner [i.e., for the obligations of the limited partnership] unless . . . he takes part in the control of the business.” The 1976 Uniform Limited Partnership Act (ULPA-1976) “carried[] over the basic test from former Section 7,” but recognized “the difficulty of determining when the ‘control’ line has been overstepped.” Comment to ULPA-1976, Section 303. Accordingly, ULPA-1976 tried to buttress the limited partner’s shield by (i) providing a safe harbor for a lengthy list of activities deemed not to constitute participating in control, ULPA-1976, Section 303(b), and (ii) limiting a limited partner’s “control rule” liability “only to persons who transact business with the limited partnership with actual knowledge of [the limited partner’s] participation in control.” ULPA-1976, Section 303(a). However, these protections were complicated by a countervailing rule which made a limited partner generally liable for the limited partnership’s obligations “if the limited partner’s participation in the control of the business is . . . substantially the same as the exercise of the powers of a general partner.” ULPA-1976, Section 303(a).

The 1985 amendments to ULPA-1976 (i.e.,

RULPA) further buttressed the limited partner’s shield, removing the “substantially the same” rule, expanding the list of safe harbor activities and limiting “control rule” liability “only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner’s conduct, that the limited partner is a general partner.”

In a world with LLPs, LLCs and, most importantly, LLLPs, the control rule has become an anachronism. This Act therefore takes the next logical step in the evolution of the limited partner’s liability shield and renders the control rule extinct.

The shield established by this section protects only against liability for the limited partnership’s obligations and only to the extent that the limited partner is claimed to be liable on account of being a limited partner. Thus, a person that is both a general and limited partner will be liable as a general partner for the limited partnership’s obligations. Moreover, this section does not prevent a limited partner from being liable as a result of the limited partner’s own conduct and is therefore inapplicable when a third party asserts that a limited partner’s own wrongful conduct has injured the third party. This section is likewise inapplicable to claims by the limited partnership or another partner that a limited partner has breached a duty under this Act or the partnership agreement.

This section does not eliminate a limited partner’s liability for promised contributions, Section 502 or improper distributions, Section 509. That liability pertains to a person’s status as a limited partner but is **not** liability for an obligation of the limited partnership.

The shield provided by this section applies whether or not a limited partnership is a limited liability limited partnership.

53-2-304. Right of limited partner and former limited partner to information. — (1) On ten (10) days’ demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership’s principal office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

(a) The limited partner seeks the information for a purpose reasonably related to the partner’s interest as a limited partner;

- (b) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
- (c) The information sought is directly connected to the limited partner's purpose.

(3) Within ten (10) days after receiving a demand pursuant to subsection (2) of this section, the limited partnership in a record shall inform the limited partner that made the demand:

- (a) What information the limited partnership will provide in response to the demand;
- (b) When and where the limited partnership will provide the information; and
- (c) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6) of this section, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

- (a) The information pertains to the period during which the person was a limited partner;
- (b) The person seeks the information in good faith; and
- (c) The person meets the requirements of subsection (2) of this section.

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) of this section in the same manner as provided in subsection (3) of this section.

(6) If a limited partner dies, section 53-2-704, Idaho Code, applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(10) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) of this section or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(11) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner. [I.C., § 53-2-304, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 52, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (1) and in the intro-

ductory paragraph in subsection (4), substituted “principal office” for “designated office.”

COMMENT TO OFFICIAL TEXT

This section balances two countervailing concerns relating to information: the need of limited partners and former limited partners for access versus the limited partnership's need to protect confidential business data and other intellectual property. The balance must be understood in the context of fiduciary duties. The general partners are obliged through their duties of care and loyalty to protect information whose confidentiality is important to the limited partnership or otherwise inappropriate for dissemination. See Section 408 (general standards of general partner conduct). A limited partner, in contrast, “does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.” Section 305(a). (Both general partners and limited partners are subject to a duty of good faith and fair dealing. Section 305(b) and 408(d).)

Like predecessor law, this Act divides limited partner access rights into two categories — required information and other information. However, this Act builds on predecessor law by:

- expanding slightly the category of required information and stating explicitly that a limited partner may have access to that information without having to show cause
- specifying a procedure for limited partners to follow when demanding access to other information
- specifying how a limited partnership must respond to such a demand and setting a time limit for the response
- retaining predecessor law's “just and reasonable” standard for determining a limited partner's right to other information, while recognizing that, to be “just and reasonable,” a limited partner's demand for other information must meet at minimum standards of relatedness and particularity
- expressly requiring the limited partnership to volunteer known, material information when seeking or obtaining consent from limited partners
- codifying (while limiting) the power of the partnership agreement to vary limited partner access rights
- permitting the limited partnership to establish other reasonable limits on access
- providing access rights for former limited partners.

The access rights stated in this section are

personal to each limited partner and are enforceable through a direct action under Section 1001(a). These access rights are in addition to whatever discovery rights a party has in a civil suit.

Subsection (a) — The phrase “required information” is a defined term. See Sections 102(18)(17) and 111. This subsection's broad right of access is subject not only to reasonable limitations in the partnership agreement, Section 110(b)(4), but also to the power of the limited partnership to impose reasonable limitations on use. Unless the partnership agreement provides otherwise, it will be the general partner or partners that have the authority to use that power. See Section 406(a).

Subsection (b) — The language describing the information to be provided comes essentially verbatim from RULPA Section 305(a)(2)(i) and (iii). The procedural requirements derive from RMBCA Section 16.02(c). This subsection does not impose a requirement of good faith, because Section 305(b) contains a generally applicable obligation of good faith and fair dealing for limited partners.

Subsection (d) — The notion that former owners should have information rights comes from RUPA Section 403(b) and ULLCA Section 408(a). The access is limited to the required information and is subject to certain conditions.

Example: A person dissociated as a limited partner seeks data which the limited partnership has compiled, which relates to the period when the person was a limited partner, but which is beyond the scope of the information required by Section 111. No matter how reasonable the person's purpose and how well drafted the person's demand, the limited partnership is not obliged to provide the data.

Example: A person dissociated as a limited partner seeks access to required information pertaining to the period during which the person was a limited partner. The person makes a bald demand, merely stating a desire to review the required information at the limited partnership's designated office. In particular, the demand does not describe “with reasonable particularity the information sought and the purpose for seeking the information.” See subsection (b)(2). The limited partnership is

not obliged to allow access. The person must first comply with subsection (d), which incorporates by reference the requirements of subsection (b).

Subsection (f) and Section 704 provide greater access rights for the estate of a deceased limited partner.

Subsection (d)(2) — A duty of good faith is needed here, because a person claiming access under this subsection is no longer a limited partner and is no longer subject to Section 305(b). See Section 602(a)(2) (dissociation as a limited partner terminates duty of good faith as to subsequent events).

Subsection (g) — This subsection permits the limited partnership — as distinguished from the partnership agreement — to impose use limitations. Contrast Section 110(b)(4). Under Section 406(a), it will be the general

partner or partners that decide whether the limited partnership will impose use restrictions.

The limited partnership bears the burden of proving the reasonableness of any restriction imposed under this subsection. In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting use of the names and addresses of limited partners is not per se unreasonable.

The following table compares the limitations available through the partnership agreement with those available under this subsection.

	partnership agreement	Section 304(g)
how restrictions adopted	by the consent of partners when they adopt or amend the partnership agreement, unless the partnership agreement provides another method of amendment	by the general partners, acting under Section 406(a)
what restrictions may be imposed	"reasonable restrictions on the availability and use of information obtained," Section 110(b)(4)	"reasonable restrictions on the use of information obtained"
burden of proof	the person challenging the restriction must prove that the restriction will "unreasonably restrict the right of information," Section 110(b)(4)	"the limited partnership has the burden of proving reasonableness"

Subsection (h) — Source: RUPA Section 403(b) and ULLCA Section 408(a).

Subsection (i) — Source: ULLCA Section 408(b).

The duty stated in this subsection is at the core of the duties owed the limited partners by a limited partnership and its general partners. This subsection imposes an affirmative duty to volunteer information, but that obligation is limited to information which is both material and known by the limited partnership. The duty applies to known, material information, even if the limited partnership does not know that the information is material.

A limited partnership will "know" what its general partners know. Section 103(h). A limited partnership may also know information known by the "individual conducting the transaction for the [limited partnership]." Section 103(g).

A limited partner's right to information

under this subsection is enforceable through the full panoply of "legal or equitable relief" provided by Section 1001(a), including in appropriate circumstances the withdrawal or invalidation of improperly obtained consent and the invalidation or rescission of action taken pursuant to that consent.

Subsection (k) — Section 304 provides no information rights to a transferee as transferee. Transferee status brings only the very limited information rights stated in Section 702(c).

It is nonetheless possible for a person that happens to be a transferee to have rights under this section. For example, under Section 602(a)(3) a person dissociated as a limited partner becomes a "mere transferee" of its own transferable interest. While that status provides the person no rights under this section, the status of person dissociated as a limited partner triggers rights under subsection (d).

53-2-305. Limited duties of limited partners. — (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest. [I.C., § 53-2-305, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — Fiduciary duty typically attaches to a person whose status or role creates significant power for that person over the interests of another person. Under this Act, limited partners have very limited power of any sort in the regular activities of the limited partnership and no power whatsoever justifying the imposition of fiduciary duties either to the limited partnership or fellow partners. It is possible for a partnership agreement to allocate significant managerial authority and power to a limited partner, but in that case the power exists not as a matter of status or role but rather as a matter of contract. The proper limit on such contract-based power is the obligation of good faith and fair dealing, not fiduciary duty, unless the partnership agreement itself expressly imposes a fiduciary duty or creates a role for a limited partner which, as a matter of other law, gives rise to a fiduciary duty. For example, if the partnership agreement makes a limited partner an agent for the limited partnership as to particular matters, the law of agency will impose fiduciary duties on the limited partner with respect to the limited partner's role as agent.

Subsection (b) — Source: RUPA Section 404 (d). The same language appears in Section 408(d), pertaining to general partners.

The obligation of good faith and fair dealing is *not* a fiduciary duty, does not command altruism or self-abnegation, and does not prevent a partner from acting in the partner's own self-interest. Courts should not use the

obligation to change *ex post facto* the parties' or this Act's allocation of risk and power. To the contrary, in light of the nature of a limited partnership, the obligation should be used only to protect agreed-upon arrangements from conduct that is manifestly beyond what a reasonable person could have contemplated when the arrangements were made.

The partnership agreement or this Act may grant discretion to a partner, and that partner may properly exercise that discretion even though another partner suffers as a consequence. Conduct does not violate the obligation of good faith and fair dealing merely because that conduct substantially prejudices a party. Indeed, parties allocate risk precisely because prejudice may occur. The exercise of discretion constitutes a breach of the obligation of good faith and fair dealing only when the party claiming breach shows that the conduct has no honestly-held purpose that legitimately comports with the parties' agreed-upon arrangements. Once such a purpose appears, courts should not second guess a party's choice of method in serving that purpose, unless the party invoking the obligation of good faith and fair dealing shows that the choice of method itself lacks any honestly-held purpose that legitimately comports with the parties' agreed-upon arrangements.

In sum, the purpose of the obligation of good faith and fair dealing is to protect the arrangement the partners have chosen for themselves, not to restructure that arrangement under the guise of safeguarding it.

53-2-306. Person erroneously believing self to be limited partner. — (1) Except as otherwise provided in subsection (2) of this section, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or

exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(a) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(b) Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

(2) A person that makes an investment described in subsection (1) of this section is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with subsection (1)(a) of this section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) of this section even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise. [I.C., § 53-2-306, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 304, substantially redrafted for reasons of style.

Subsection (a)(2) — The requirement that a person “withdraw[] from future participation as an owner in the enterprise” means,

in part, that the person refrain from taking any further profit from the enterprise. The requirement does not mean, however, that the person is required to return previously obtained profits or forfeit any investment.

PART 4. GENERAL PARTNERS

STATUTORY NOTES

Compiler’s Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-401. Becoming general partner. — A person becomes a general partner:

(1) As provided in the partnership agreement;

(2) Under section 53-2-801(4), Idaho Code, following the dissociation of a limited partnership’s last general partner;

(3) As the result of a conversion or merger under part 11 of this chapter; or

(4) With the consent of all the partners. [I.C., § 53-2-401, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section does not make a person's status as a general partner dependent on the person being so designated in the certificate of limited partnership. If a person does become a general partner under this section without being so designated:

- the limited partnership is obligated to promptly and appropriately amend the certificate of limited partnership, Section 202(b)(1);
- each general partner that knows of the anomaly is personally obligated to cause the certificate to be promptly and appropriately amended, Section 202(c)(1), and is subject to liability for failing to do so, Section 208(a)(2);
- the "non-designated" general partner has:
 - all the rights and duties of a general partner to the limited partnership and the other partners, and
 - the powers of a general partner to bind the limited partnership under Sections 402 and 403, but
 - no power to sign records which are to be filed on behalf of the limited partnership under this Act

Example: By consent of the partners of XYZ Limited Partnership, G is admitted as a general partner. However, XYZ's certificate of limited partnership is not amended accordingly. Later, G — acting without actual authority — purports to bind XYZ to a transaction with Third Party. Third Party does not review the filed certificate of limited partnership before entering into the

transaction. XYZ might be bound under Section 402.

Section 402 attributes to a limited partnership "[a]n act of a general partner ... for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership." The limited partnership's liability under Section 402 does not depend on the "act of a general partner" being the act of a general partner designated in the certificate of limited partnership. Moreover, the notice provided by Section 103(c) does not undercut G's appearance of authority. Section 402 refers only to notice under Section 103(d) and, in any event, according to the second sentence of Section 103(c), the fact that a person is **not** listed as in the certificate as a general partner is **not** notice that the person is **not** a general partner. See Comment to Section 103(c).

Example: Same facts, except that Third Party does review the certificate of limited partnership before entering into the transaction. The result might still be the same.

The omission of a person's name from the certificate's list of general partners is **not** notice that the person is **not** a general partner. Therefore, Third Party's review of the certificate does not mean that Third Party knew, had received a notification or had notice that G lacked authority. At most, XYZ could argue that, because Third Party knew that G was not listed in the certificate, a transaction entered into by G could not appear to Third Party to be for apparently carrying on the limited partnership's activities in the ordinary course.

53-2-402. General partner agent of limited partnership. —

(1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under section 53-2-103(4), Idaho Code, that the general partner lacked authority.

(2) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners. [I.C., § 53-2-402, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 301. For the meaning of “authority” in subsection (a) and “authorized” in subsection (b), see RUPA Section 301, Comment 3 (stating that “Subsection (2) [of RUPA Section 301] makes it clear that the partnership is bound by a partner’s *actual* authority, even if the partner has no apparent authority”; emphasis added).

The fact that a person is not listed in the certificate of limited partnership as a general partner is **not** notice that the person is **not** a partner and is **not** notice that the person lacks authority to act for the limited partnership. See Comment to Section 103(c) and Comment to Section 401.

Section 103(f) defines receipt of notification. Section 103(d) lists various public filings, each of which provides notice 90 days after its effective date.

Example: For the past ten years, X has been a general partner of XYZ Limited

Partnership and has regularly conducted the limited partnership’s business with Third Party. However, 100 days ago the limited partnership expelled X as a general partner and the next day delivered for filing an amendment to XYZ’s certificate of limited partnership which stated that X was no longer a general partner. On that same day, the filing officer filed the amendment.

Today X approaches Third Party, purports still be to a general partner of XYZ and purports to enter into a transaction with Third Party on XYZ’s behalf. Third Party is unaware that X has been expelled and has no reason to doubt that X’s bona fides. Nonetheless, XYZ is not liable on the transaction. Under Section 103(d), Third Party has notice that X is dissociated and perforce has notice that X is not a general partner authorized to bind XYZ.

53-2-403. Limited partnership liable for general partner’s actionable conduct. — (1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If, in the course of the limited partnership’s activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss. [I.C., § 53-2-403, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 305. For the meaning of “authority” in subsections (a) and (b), see RUPA Section 305, Comment. The third-to-last paragraph of that Comment states:

The partnership is liable for the actionable conduct or omission of a partner acting in the ordinary course of its business or “with the authority of the partnership.” This is intended to include a partner’s apparent, as well as actual, authority, thereby bringing within Section 305(a) the situation covered in UPA Section 14(a).

The last paragraph of that Comment states: Section 305(b) is drawn from UPA Section 14(b), but has been edited to improve clarity. It imposes strict liability on the partnership for the misapplication of money or

property received by a partner in the course of the partnership’s business or otherwise within the scope of the partner’s actual authority.

Section 403(a) of this Act is taken essentially verbatim from RUPA Section 305(a), and Section 403(b) of this Act is taken essentially verbatim from RUPA Section 305(b).

This section makes the limited partnership vicariously liable for a partner’s misconduct. That vicariously liability in no way discharges or diminishes the partner’s direct liability for the partner’s own misconduct.

A general partner can cause a limited partnership to be liable under this section, even if the general partner is not designated as a general partner in the certificate of limited partnership. See Comment to Section 401.

53-2-404. General partner's liability. — (1) Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection (3) applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 53-2-406(2)(b), Idaho Code. [I.C., § 53-2-404, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 306.

Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

Subsection (c) — For an explanation of the decision to provide for limited liability limited partnerships.

53-2-405. Actions by and against partnership and partners. —

(1) To the extent not inconsistent with section 53-2-404, Idaho Code, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 53-2-404, Idaho Code, and:

(a) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The limited partnership is a debtor in bankruptcy;

(c) The general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership. [I.C., § 53-2-405, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 307.

If a limited partnership is a limited liability limited partnership throughout its existence, this section will bar a creditor of a limited

partnership from impleading, suing or reaching the assets of a general partner unless the creditor can satisfy subsection (c)(5).

53-2-406. Management rights of general partner. — (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one (1) general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) Amend the partnership agreement;

(b) Amend the certificate of limited partnership to add or, subject to section 53-2-1110, Idaho Code, delete a statement that the limited partnership is a limited liability limited partnership; and

(c) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (3) or (4) of this section constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance. [I.C., § 53-2-406, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 401 and ULLCA Section 404.

Subsection (a) — This Act assumes that, more often than not, people utilizing the Act will want (i) strong centralized management, strongly entrenched, and (ii) passive investors with little control over the entity. Section 302 essentially excludes limited partners from the ordinary management of a limited partnership's activities. This subsection states affirmatively the general partners' commanding role. Only the partnership

agreement and the express provisions of this Act can limit that role.

The authority granted by this subsection includes the authority to delegate. Delegation does not relieve the delegating general partner or partners of their duties under Section 408. However, the fact of delegation is a fact relevant to any breach of duty analysis.

Example: A sole general partner personally handles all "important paperwork" for a limited partnership. The general partner neglects to renew the fire insurance cover-

age on the a building owned by the limited partnership, despite having received and read a warning notice from the insurance company. The building subsequently burns to the ground and is a total loss. The general partner might be liable for breach of the duty of care under Section 408(c) (gross negligence).

Example: A sole general partner delegates responsibility for insurance renewals to the limited partnership's office manager, and that manager neglects to renew the fire insurance coverage on the building. Even assuming that the office manager has been grossly negligent, the general partner is not necessarily liable under Section 408(c). The office manager's gross negligence is not automatically attributed to the general partner. Under Section 408(c), the question is whether the general partner was grossly negligent (or worse) in selecting the general manager, delegating insurance renewal matters to the general manager and supervising the general manager after the delegation.

For the consequences of delegating authority to a person that is a limited partner, see the Comment to Section 305.

The partnership agreement may also provide for delegation and, subject to Section 110(b)(5) — (7), may modify a general partner's Section 408 duties.

Subsection (b) — This subsection limits the managerial rights of the general partners, requiring the consent of each general and limited partner for the specified actions. The subsection is subject to change by the partnership agreement, except as provided in Section 110(b)(12) (pertaining to consent rights established by Section 1110).

Subsection (c) — This Act does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent that by contract or other arrangement a limited partner has authority to act on behalf of the limited partnership, agency law principles will create an indemnity obligation. In other situations, principles of restitution might apply.

Subsection (f) — Unlike RUPA Section 401(h), this subsection provides no compensation for winding up efforts. In a limited partnership, winding up is one of the tasks for which the limited partners depend on the general partner. There is no reason for the Act to single out this particular task as giving rise to compensation.

53-2-407. Right of general partner and former general partner to information. — (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

- (a) In the limited partnership's principal office, required information; and
- (b) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

- (a) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and
- (b) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5) of this section, on ten (10) days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) of this section at the location specified in subsection (1) of this section if:

- (a) The information or record pertains to the period during which the person was a general partner;
- (b) The person seeks the information or record in good faith; and

(c) The person satisfies the requirements imposed on a limited partner by section 53-2-304(2), Idaho Code.

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) of this section in the same manner as provided in section 53-2-304(3), Idaho Code.

(5) If a general partner dies, section 53-2-704, Idaho Code, applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) of this section or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of this section of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section 53-2-603(7)(b) or (c), Idaho Code. [I.C., § 53-2-407, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 53, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “principal office” for “designated office” in subsection (1)(a).

COMMENT TO OFFICIAL TEXT

This section’s structure parallels the structure of Section 304 and the Comment to that section may be helpful in understanding this section.

Subsection (b) — Source: RUPA Section 403(c).

Subsection (b)(1) — If a particular item of material information is apparent in the limited partnership’s records, whether a general partner is obliged to disseminate that information to fellow general partners depends on the circumstances.

Example: A limited partnership has two general partners: each of which is regularly engaged in conducting the limited partnership’s activities; both of which are aware of and have regular access to all significant limited partnership records; and neither of which has special responsibility for or knowledge about any particular aspect of those activities or the partnership records

pertaining to any particular aspect of those activities. Most likely, neither general partner is obliged to draw the other general partner’s attention to information apparent in the limited partnership’s records.

Example: Although a limited partnership has three general partners, one is the managing partner with day-to-day responsibility for running the limited partnership’s activities. The other two meet periodically with the managing general partner, and together with that partner function in a manner analogous to a corporate board of directors. Most likely, the managing general partner has a duty to draw the attention of the other general partners to important information, even if that information would be apparent from a review of the limited partnership’s records.

In all events under subsection (b)(1), the question is whether the disclosure by one

general partner is “reasonably required for the proper exercise” of the other general partner’s rights and duties.

Subsection (f) — This provision is identical to Section 304(g) and the Comment to Section 304(g) is applicable here. Under this Act, general and limited partners have sharply different roles. A restriction that is reasonable as to a limited partner is not necessarily reasonable as to a general partner.

Subsection (g) — No charge is allowed for current general partners, because in almost all cases they would be entitled to reimbursement under Section 406(c). Contrast Section 304(h), which authorizes charges to current limited partners.

Subsection (i) — The Comment to Section 304(k) is applicable here.

53-2-408. General standards of general partner’s conduct. —

(1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3) of this section.

(2) A general partner’s duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership’s activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership’s activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership’s activities.

(3) A general partner’s duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership’s activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner’s conduct furthers the general partner’s own interest. [I.C., § 53-2-408, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 404.

This section does not prevent a general partner from delegating one or more duties, but delegation does not discharge the duty. For further discussion, see the Comment to Section 406(a).

If the partnership agreement removes a particular responsibility from a general partner, that general partner’s fiduciary duty must be judged according to the rights and powers the general partner retains. For ex-

ample, if the partnership agreement denies a general partner the right to act in a particular matter, the general partner’s compliance with the partnership agreement cannot be a breach of fiduciary duty. However, the general partner may still have a duty to provide advice with regard to the matter. That duty could arise from the fiduciary duty of care under Section 408(c) and the duty to provide information under Sections 304(i) and 407(b).

For the partnership agreement’s power di-

rectly to circumscribe a general partner's fiduciary duty, see Section 110(b)(5) and (6).

Subsection (a) — The reference to "the other partners" does not affect the distinction between direct and derivative claims. See Section 1001(b) (prerequisites for a partner bringing a direct claim).

Subsection (b) — A general partner's duty under this subsection continues through

winding up, since the limited partners' dependence on the general partner does not end at dissolution. See Comment to Section 406(f) (explaining why this Act provides no remuneration for a general partner's winding up efforts).

Subsection (d) — This provision is identical to Section 305(b) and the Comment to Section 305(b) is applicable here.

PART 5. CONTRIBUTIONS AND DISTRIBUTIONS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-501. Form of contribution. — A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed. [I.C., § 53-2-501, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 401.

53-2-502. Liability for contribution. — (1) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(2) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(3) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (1) of this section, without notice of any compromise under this subsection, may enforce the original obligation. [I.C., § 53-2-502, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

In contrast with predecessor law, RULPA Section 502(a), this Act does not include a statute of frauds provision covering promised contributions. Section 111(9)(A) does require that the value of a promised contribution be

memorialized, but that requirement does not affect enforceability. See Comment to Section 111(9).

Subsection (a) — Source: RULPA Section 502(b).

Under common law principles of impracticability, an individual's death or incapacity will sometimes discharge a duty to render performance. Restatement (Second) of Contracts, Sections 261 and 262. This subsection overrides those principles.

Subsection (b) — RULPA Section 502(b).

This subsection is a statutory liquidated damage provision, exercisable at the option of the limited partnership, with the damage amount set according to the value of the promised, non-monetary contribution as stated in the required information.

Example: In order to become a limited partner, a person promises to contribute to the limited partnership various assets which the partnership agreement values at \$150,000. In return for the person's promise, and in light of the agreed value, the limited partnership admits the person as a limited partner with a right to receive 25% of the limited partnership's distributions.

The promised assets are subject to a security agreement, but the limited partner promises to contribute them "free and clear." Before the limited partner can contribute the assets, the secured party fore-

closes on the security interest and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the actual fair market value of the assets, under this subsection the limited partnership has a claim against the limited partner for "the value, as stated in the required information, of the stated contribution which has not been made" — i.e., \$150,000.

This section applies "at the option of the limited partnership" and does not affect other remedies which the limited partnership may have under other law.

Example: Same facts as the previous example, except that the public sale brings \$225,000. The limited partnership is not obliged to invoke this subsection and may instead sue for breach of the promise to make the contribution, asserting the \$225,000 figure as evidence of the actual loss suffered as a result of the breach.

Subsection (c) — Source: ULLCA Section 402(b); RULPA Section 502(c). The first sentence of this subsection applies not only to promised contributions but also to improper distributions. See Sections 508 and 509. The second sentence, pertaining to creditor's rights, applies only to promised contributions.

53-2-503. Sharing of distributions. — A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner. [I.C., § 53-2-503, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This Act has no provision allocating profits and losses among the partners. Instead, the Act directly apportions the right to receive distributions.

Nearly all limited partnerships will choose to allocate profits and losses in order to comply with applicable tax, accounting and other regulatory requirements. Those requirements, rather than this Act, are the proper source of guidance for that profit and loss allocation.

Unlike predecessor law, this section apportions distributions in relation to the value of contributions received from each partner without regard to whether the limited part-

nership has returned any of those contributions. Compare RULPA Sections 503 and 504. This Act's approach produces the same result as predecessor law, so long as the limited partnership does not vary this section's approach to apportioning distributions.

This section's rule for sharing distributions is subject to change under Section 110. A limited partnership that does vary the rule should be careful to consider not only the tax and accounting consequences but also the "ripple" effect on other provisions of this Act. See, e.g., Sections 801 and 803(c) (apportioning consent power in relation to the right to receive distributions).

53-2-504. Interim distributions. — A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution. [I.C., § 53-2-504, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Under Section 406(a), the general partner or partners make this decision for the limited partnership.

53-2-505. No distribution on account of dissociation. — A person does not have a right to receive a distribution on account of dissociation. [I.C., § 53-2-505, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section varies substantially from predecessor law. RULPA Sections 603 and 604 permitted a limited partner to withdraw on six months notice and receive the fair value of the limited partnership interest, unless the partnership agreement provided the limited partner with some exit right or stated a

definite duration for the limited partnership.

Under this Act, a partner that dissociates becomes a transferee of its own transferable interest. See Sections 602(a)(3) (person dissociated as a limited partner) and 605(a)(5) (person dissociated as a general partner).

53-2-506. Distribution in kind. — A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 53-2-812(2), Idaho Code, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions. [I.C., § 53-2-506, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 605.

53-2-507. Right to distribution. — When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made. [I.C., § 53-2-507, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 606.

This section's first sentence refers to distributions generally. Contrast Section 508(e), which refers to indebtedness issued as a distribution.

The reference in the second sentence to "dissociated partner" encompasses circumstances in which the partner is gone and the dissociated partner's transferable interest is all that remains.

53-2-508. Limitations on distribution. — (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (6) of this section, the effect of a distribution under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty (120) days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. [I.C., § 53-2-508, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 406. See also RMBCA Section 6.40.

Subsection (c) — This subsection appears to impose a standard of ordinary care, in contrast with the general duty of care stated in Section 408(c). For a reconciliation of these two provisions, see Comment to Section 509(a).

53-2-509. Liability for improper distributions. — (1) A general partner that consents to a distribution made in violation of section 53-2-508, Idaho Code, is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed

without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 53-2-408, Idaho Code.

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 53-2-508, Idaho Code, is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 53-2-508, Idaho Code.

(3) A general partner against which an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other person that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that received a distribution in violation of subsection (2) of this section and compel contribution from the person in the amount the person received in violation of subsection (2) of this section.

(4) An action under this section is barred if it is not commenced within two (2) years after the distribution. [I.C., § 53-2-509, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 407. See also RMBCA Section 8.33.

In substance and effect this section protects the interests of creditors of the limited partnership. Therefore, according to Section 110(b)(13), the partnership agreement may not change this section in a way that restricts the rights of those creditors. As for a limited partnership's power to compromise a claim under this section, see Section 502(c).

Subsection (a) — This subsection refers both to Section 508, which includes in its subsection (c) a standard of ordinary care ("reasonable in the circumstances"), and to Section 408, which includes in its subsection (c) a general duty of care that is limited to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

A limited partnership's failure to meet the standard of Section 508(c) cannot by itself cause a general partner to be liable under Section 509(a). Both of the following would have to occur before a failure to satisfy Section 508(c) could occasion personal liability for a general partner under Section 509(a):

- the limited partnership "base[s] a de-

termination that a distribution is not prohibited ... on financial statements prepared on the basis of accounting practices and principles that are [not] reasonable in the circumstances or on a [not] fair valuation or other method that is [not] reasonable in the circumstances" [Section 508(c)]

AND

- the general partner's decision to rely on the improper methodology in consenting to the distribution constitutes "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law" [Section 408(c)] or breaches some other duty under Section 408.

To serve the protective purpose of Sections 508 and 509, in this subsection "consent" must be understood as encompassing any form of approval, assent or acquiescence, whether formal or informal, express or tacit.

Subsection (d) — The subsection's limitation applies to the commencement of an action under subsection (a) or (b) and not to subsection (c), under which a general partner may implead other persons.

PART 6. DISSOCIATION

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uni-

form Limited Partnership Act have been set out herein. Note that because of some vari-

ances, e.g., the designation schemes in the uniform act and in the legislation enacted in Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform

act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-601. Dissociation as limited partner. — (1) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person, provided however, a limited partner dissociating under this section shall thereafter have the status of a mere transferee as provided in section 53-2-602(1)(c), Idaho Code;

(b) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) The person's expulsion as a limited partner pursuant to the partnership agreement;

(d) The person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(iii) The person is a corporation and, within ninety (90) days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 53-2-305(2), Idaho Code; or

(iii) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(f) In the case of a person who is an individual, the person's death;

(g) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire

transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) The limited partnership's participation in a conversion or merger under part 11 of this chapter, if the limited partnership:

(i) Is not the converted or surviving entity; or

(ii) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner. [I.C., § 53-2-601, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim, except for provisions inappropriate to limited partners. For example, this section does not provide for the dissociation of a person as a limited partner on account of bankruptcy, insolvency or incompetency.

This Act refers to a *person's dissociation as a limited partner* rather than to the *dissociation of a limited partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Subsection (a) — This section varies sub-

stantially from predecessor law. See Comment to Section 505.

Subsection (b)(1) — This provision gives a person the power to dissociate as a limited partner even though the dissociation is wrongful under subsection (a). See, however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating the power of a person to dissociate as a *general* partner but imposing no comparable restriction with regard to a person's dissociation as a *limited* partner).

Subsection (b)(5) — In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

53-2-602. Effect of dissociation as limited partner. — (1) Upon a person's dissociation as a limited partner:

(a) Subject to section 53-2-704, Idaho Code, the person does not have further rights as a limited partner;

(b) The person's obligation of good faith and fair dealing as a limited partner under section 53-2-305(2), Idaho Code, continues only as to matters arising and events occurring before the dissociation; and

(c) Subject to section 53-2-704, Idaho Code, and part 11 of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner. [I.C., § 53-2-602, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 603(b).

Subsection (a)(1) — In general, when a person dissociates as a limited partner, the person's rights as a limited partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. However, Section 704 provides some special rights when dissociation is caused by an individual's death.

Subsection (a)(3) — For any person that

is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a limited partner and may override the rule stated in this paragraph.

53-2-603. Dissociation as general partner. — A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) The person's expulsion as a general partner pursuant to the partnership agreement;

(4) The person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) It is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(c) The person is a corporation and, within ninety (90) days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 53-2-408, Idaho Code; or

(c) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) The person's:

(a) Becoming a debtor in bankruptcy;

- (b) Execution of an assignment for the benefit of creditors;
- (c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or
- (d) Failure, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a person who is an individual:
 - (a) The person's death;
 - (b) The appointment of a guardian or general conservator for the person; or
 - (c) A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;
- (8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- (10) Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or
- (11) The limited partnership's participation in a conversion or merger under part 11 of this chapter, if the limited partnership:
 - (a) Is not the converted or surviving entity; or
 - (b) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner. [I.C., § 53-2-603, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim. This Act refers to a *person's dissociation as a general partner* rather than to the *dissociation of a general partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible

for a dual capacity partner to dissociate in one capacity and not in the other.

Paragraph (1) — The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

Paragraph (5) — In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

53-2-604. Person's power to dissociate as general partner — Wrongful dissociation. — (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 53-2-603(1), Idaho Code.

- (2) A person's dissociation as a general partner is wrongful only if:
- (a) It is in breach of an express provision of the partnership agreement; or
 - (b) It occurs before the termination of the limited partnership, and:
 - (i) The person withdraws as a general partner by express will;
 - (ii) The person is expelled as a general partner by judicial determination under section 53-2-603(5), Idaho Code;
 - (iii) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or
 - (iv) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 53-2-1001, Idaho Code, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners. [I.C., § 53-2-604, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 602.

Subsection (a) — The partnership agreement may not eliminate this power. See Section 110(b)(8).

Subsection (b)(1) — The reference to “an express provision of the partnership agreement” means that a person's dissociation as a general partner in breach of the obligation of good faith and fair dealing is not wrongful dissociation for the purposes of this section. The breach might be actionable on other grounds.

Subsection (b)(2) — The reference to “before the termination of the limited partnership”

reflects the expectation that each general partner will shepherd the limited partnership through winding up. See Comment to Section 406(f). A person's obligation to remain as general partner through winding up continues even if another general partner dissociates and even if that dissociation leads to the limited partnership's premature dissolution under Section 801(3)(A).

Subsection (c) — The language “subject to Section 1001” is intended to preserve the distinction between direct and derivative claims.

53-2-605. Effect of dissociation as general partner. — (1) Upon a person's dissociation as a general partner:

- (a) The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;
- (b) The person's duty of loyalty as a general partner under section 53-2-408(2)(c), Idaho Code, terminates;
- (c) The person's duty of loyalty as a general partner under section 53-2-408(2)(a) and (b), Idaho Code, and duty of care under section 53-2-408(3), Idaho Code, continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;
- (d) The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and
- (e) Subject to section 53-2-704, Idaho Code, and part 11 of this chapter, any transferable interest owned by the person immediately before disso-

ciation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner. [I.C., § 53-2-605, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 603(b).

Subsection (a)(1) — Once a person dissociates as a general partner, the person loses all management rights as a general partner regardless of what happens to the limited partnership. This rule contrasts with RUPA Section 603(b)(1), which permits a dissociated general partner to participate in winding up in some circumstances.

Subsection (a)(4) — Both records covered by this paragraph have the same effect under Section 103(d) — namely, to give constructive notice that the person has dissociated as a general partner. The notice benefits the person by curtailing any further personal liability under Sections 607, 805, and 1111. The notice benefits the limited partnership by curtailing any lingering power to bind under Sections 606, 804, and 1112.

The limited partnership is in any event obligated to amend its certificate of limited partnership to reflect the dissociation of a person as general partner. See Section 202(b)(2). In most circumstances, the amend-

ment requires the signature of the person that has dissociated. Section 204(a)(5)(C). If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 205 (Signing and Filing Pursuant to Judicial Order).

Subsection (a)(5) — In general, when a person dissociates as a general partner, the person's rights as a general partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Section 704 provides some special rights when an individual dissociates by dying. Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

53-2-606. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. — (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under part 11 of this chapter, or merged out of existence under part 11 of this chapter, the limited partnership is bound by an act of the person only if:

(a) The act would have bound the limited partnership under section 53-2-402, Idaho Code, before the dissociation; and

(b) At the time the other party enters into the transaction:

(i) Less than two (2) years has passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1) of this section, the person dissociated as a general partner which caused the limited partnership to be bound is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1) of this section; and

(b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any

damage caused to the general partner or other person arising from the liability. [I.C., § 53-2-606, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 702.

This Act contains three sections pertaining to the lingering power to bind of a person dissociated as a general partner:

- this section, which applies until the limited partnership dissolves, converts to another form of organization under Article 11, or is merged out of existence under Article 11;
- Section 804(b), which applies after a limited partnership dissolves; and
- Section 1112(b), which applies after a conversion or merger.

Subsection (a)(2)(B) — A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b) — The liability provided by this subsection is not exhaustive. For example, if a person dissociated as a general partner causes a limited partnership to be bound under subsection (a) and, due to a guaranty, some other person is liable on the resulting obligation, that other person may have a claim under other law against the person dissociated as a general partner.

53-2-607. Liability to other persons of person dissociated as general partner. — (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3) of this section, the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 53-2-404, Idaho Code, on an obligation incurred by the limited partnership under section 53-2-804, Idaho Code.

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

- (a) A general partner would be liable on the transaction; and
- (b) At the time the other party enters into the transaction:
 - (i) Less than two (2) years has passed since the dissociation; and
 - (ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation. [I.C., § 53-2-607, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 703.

A person's dissociation as a general partner

does not categorically prevent the person from being liable as a general partner for

subsequently incurred obligations of the limited partnership. If the dissociation results in dissolution, subsection (b) applies and the person will be liable as a general partner on any partnership obligation incurred under Section 804. In these circumstances, neither filing a statement of dissociation nor amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering exposure to liability.

If the dissociation does not result in dissolution, subsection (c) applies. In this context, filing a statement of dissociation or amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering liability. See subsection (c)(2)(B).

If the limited partnership subsequently dissolves as the result of some other occurrence

(i.e., not a result of the person's dissociation as a general partner), subsection (c) continues to apply. In that situation, Section 804 will determine whether, for the purposes of subsection (c), the limited partnership has entered into a transaction after dissolution.

If the limited partnership is a limited liability limited partnership, these liability rules are moot.

Subsection (a) — The phrase "liability as a general partner for an obligation of the limited partnership" refers to liability under Section 404. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

Subsection (c)(2)(B) — A person might have notice under Section 103(d)(1) as well as under Section 103(b).

PART 7. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-701. Partner's transferable interest. — The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property. [I.C., § 53-2-701, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 502.

Like all other partnership statutes, this Act dichotomizes each partner's rights into economic rights and other rights. The former are freely transferable, as provided in Section 702. The latter are not transferable at all, unless the partnership agreement so provides.

Although a partner or transferee owns a transferable interest as a present right, that right only entitles the owner to distributions

if and when made. See Sections 504 (subject to any contrary provision in the partnership agreement, no right to interim distribution unless the limited partnership decides to make an interim distribution) and the Comment to Section 812 (subject to any contrary provision in the partnership agreement, no partner obligated to contribute for the purpose of equalizing or otherwise allocating capital losses).

53-2-702. Transfer of partner's transferable interest. — (1) A transfer, in whole or in part, of a partner's transferable interest:

- (a) Is permissible;
- (b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and
- (c) Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the

limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3) of this section, or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

- (a) Distributions to which the transferor would otherwise be entitled; and
- (b) Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 53-2-502 and 53-2-509, Idaho Code. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner. [I.C., § 53-2-702, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 503, except for subsection (g), which derives from RULPA Section 704(b). Following RUPA, this Act uses the words "transfer" and "transferee" rather than the words "assignment" and "assignee." See RUPA Section 503.

Subsection (a)(2) — The phrase "by itself" is significant. A transfer of all of a person's transferable interest could lead to dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

Subsection (a)(3) — Mere transferees have no right to intrude as the partners carry on their activities as partners. Moreover, a partner's obligation of good faith and fair dealing under Sections 305(b) and 408(d) is framed in reference to "the limited partnership and the other partners." See also Comment to Section 1102(b)(3) and Comment to Section 1106(b)(3).

53-2-703. Rights of creditor of partner or transferee. — (1) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to

the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than limited partnership property, by one (1) or more of the other partners; or

(c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(4) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest. [I.C., § 53-2-703, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

Under this section, the judgment creditor of a partner or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the partner or transferee whose interest is subject to the order. The creditor has no say in the timing or amount of those distributions. The charging order does not entitle the creditor to accelerate any distributions or to otherwise interfere with the management and activities of the limited partnership.

Foreclosure of a charging order effects a permanent transfer of the charged transferable interest to the purchaser. The foreclosure does not, however, create any rights to participate in the management and conduct of the limited partnership's activities. The purchaser obtains nothing more than the status of a transferee.

Subsection (a) — The court's power to appoint a receiver and "make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require" must

be understood in the context of the balance described above. In particular, the court's power to make orders "which the circumstances may require" is limited to "giv[ing] effect to the charging order."

Example: A judgment creditor with a charging order believes that the limited partnership should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the general partners to restrict re-investment. This section does not authorize the court to grant the motion.

Example: A judgment creditor with a judgment for \$10,000 against a partner obtains a charging order against the partner's transferable interest. The limited partnership is duly served with the order. However, the limited partnership subsequently fails to comply with the order and makes a \$3000 distribution to the partner. The court has the power to order the limited partnership to turn over \$3000 to the judgment creditor to "give effect to the charging order."

The court also has the power to decide whether a particular payment is a distribution, because this decision determines whether the payment is part of a transferable interest subject to a charging order. (To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (e). The payment is therefore subject to whatever other creditor remedies may apply.)

Subsection (c)(3) — This provision requires the consent of all the limited as well as general partners.

53-2-704. Power of estate of deceased partner. — If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 53-2-702, Idaho Code, and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 53-2-304, Idaho Code. [I.C., § 53-2-704, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate.

For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section — *e.g.*, Section 304 (g) (restrictions on use) and (h) (charges for copies) — as well as any generally applicable limitations stated in the partnership agreement.

PART 8. DISSOLUTION

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variations, *e.g.*, the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-801. Nonjudicial dissolution. — Except as otherwise provided in section 53-2-802, Idaho Code, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(1) The dissolution date, if any, specified in the certificate of limited partnership, provided however, that if a dissolution date is not specified in the certificate of limited partnership, the limited partnership's existence shall continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of limited partnership, and unless the limited partnership agreement provides otherwise, the certificate of limited partnership may be amended and the existence of the limited partnership may be extended by the vote of all the general partners and of all limited partners owning the rights to receive distributions as limited partners at the time consent is to be effective;

(2) The happening of an event specified in the partnership agreement;

(3) The written consent of all general partners and of all limited partners owning the rights to receive distributions as limited partners at the time consent is to be effective;

(4) After the dissociation of the last remaining general partner, if by the ninetieth day following such dissociation, the limited partners owning a

majority of the rights to receive distributions as limited partners have failed to vote to admit one (1) or more general partners;

(5) The passage of ninety (90) days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one (1) limited partner; or

(6) The signing and filing of a declaration of dissolution by the secretary of state under section 53-2-809(3), Idaho Code. [I.C., § 53-2-801, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This Act does not require that any of the consents referred to in this section be given in the form of a signed record. The partnership agreement has the power to impose that requirement. See Comment to Section 110.

In several provisions, this section provides for consent in terms of rights to receive distributions. Distribution rights of non-partner transferees are not relevant. Mere transferees have no consent rights, and their distribution rights are not counted in determining whether majority consent has been obtained.

Paragraph (1) — There is no requirement that the relevant provision of the partnership agreement be made in a record, unless the partnership agreement creates that requirement. However, if the relevant provision is not "contained in a partnership agreement made in a record," Section 111(9)(D) includes among the limited partnership's required information "a record stating ... any events upon the happening of which the limited partnership is to be dissolved and its activities wound up."

Paragraph (2) — Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person's capacity as a limited partner. See Section 111(9)(C).

Example: XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner — 3%

Partner #2 as general partner — 2%

Partner #3 as general partner — 1%

Partner #1 as limited partner — 7%

Partner #2 as limited partner — 3%

Partner #3 as limited partner — 4%

Partner #4 as limited partner — 5%

Partner #5 as limited partner — 5%

Partner #6 as limited partner — 5%

Partner #7 as limited partner — 5%

Partner #8 as limited partner — 5%

Several non-partner transferees, in the aggregate — 55%

Distribution rights owned by persons as limited partners amount to 39% of total distribution rights. A majority is therefore anything greater than 19.5%. If only Partners 1, 2, 3 and 4 consent to dissolve, the limited partnership is not dissolved. Together these partners own as limited partners 19% of the distribution rights owned by persons as limited partners — just short of the necessary majority. For purposes of this calculation, distribution rights owned by non-partner transferees are irrelevant. So, too, are distribution rights owned by persons as general partners. (However, dissolution under this provision requires "the consent of all general partners.")

Paragraph (3)(A) — Unlike paragraph (2), this paragraph makes no distinction between distribution rights owned by persons as general partners and distribution rights owned by persons as limited partners. Distribution rights owned by non-partner transferees are irrelevant.

53-2-802. Judicial dissolution. — On application by at least one (1) general partner and a majority of the limited partners owning the rights to receive distributions as limited partners at the time of the application, the court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement. [I.C., § 53-2-802, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 802.

Section 110(b)(9) limits the power of the

partnership agreement with regard to this section.

53-2-803. Winding up. — (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 53-2-203, Idaho Code, and perform other necessary acts; and

(b) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) Has the powers of a general partner under section 53-2-804, Idaho Code; and

(b) Shall promptly amend the certificate of limited partnership to state:

(i) That the limited partnership does not have a general partner;

(ii) The name of the person that has been appointed to wind up the limited partnership; and

(iii) The street and mailing address of the person.

(4) On the application of any partner, the court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(a) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) of this section; or

(b) The applicant establishes other good cause. [I.C., § 53-2-803, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Sections 802 and 803.

Subsection (b)(2) — A limited partnership may satisfy its duty to "discharge" a liability either by paying or by making an alternative arrangement satisfactory to the creditor.

Subsection (c) — The method for deter-

mining majority consent is analogous to the method applicable under Section 801(2). See the Comment to that paragraph.

A person appointed under this subsection is **not** a general partner and therefore is not subject to Section 408.

53-2-804. Power of general partner and person dissociated as general partner to bind partnership after dissolution. — (1) A

limited partnership is bound by a general partner's act after dissolution which:

- (a) Is appropriate for winding up the limited partnership's activities; or
 - (b) Would have bound the limited partnership under section 53-2-402, Idaho Code, before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.
- (2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
- (a) At the time the other party enters into the transaction:
 - (i) Less than two (2) years have passed since the dissociation; and
 - (ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
 - (b) The act:
 - (i) Is appropriate for winding up the limited partnership's activities; or
 - (ii) Would have bound the limited partnership under section 53-2-402, Idaho Code, before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution. [I.C., § 53-2-804, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — Source: RUPA Section 804.

Subsection (a)(2) — A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

Subsection (b) — This subsection deals with the post-dissolution power to bind of a person dissociated as a general partner. Paragraph (1) replicates the provisions of Section 606, pertaining to the pre-dissolution power to bind of a person dissociated as a general partner. Paragraph (2) replicates the provisions of subsection (a), which state the post-

dissolution power to bind of a general partner. For a person dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

Subsection (b)(1)(B) — A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B) — A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

53-2-805. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner. —

(1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 53-2-804(1), Idaho Code, by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

- (a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - (b) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.
- (2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 53-2-804(2), Idaho Code, the person is liable:

- (a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
- (b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability. [I.C., § 53-2-805, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RUPA Section 806.

It is possible for more than one person to be liable under this section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

Subsection (a)(2) — If the limited part-

nership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

53-2-806. Known claims against dissolved limited partnership. —

(1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

- (a) Specify the information required to be included in a claim;
- (b) Provide a mailing address to which the claim is to be sent;
- (c) State the deadline for receipt of the claim, which may not be less than one hundred twenty (120) days after the date the notice is received by the claimant;
- (d) State that the claim will be barred if not received by the deadline; and
- (e) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 53-2-404, Idaho Code.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) of this section are met and:

- (a) The claim is not received by the specified deadline; or
- (b) In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety (90) days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date. [I.C., § 53-2-806, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 807. See also RMBCA Section 14.06.

Paragraph (b)(5) — If the limited partnership has always been a limited liability

limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

53-2-807. Other claims against dissolved limited partnership. —

(1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in Ada county;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five (5) years after publication of the notice; and

(d) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 53-2-404, Idaho Code.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five (5) years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 53-2-806, Idaho Code;

(b) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited partnership, to the extent of its undistributed assets;

(b) If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) Against any person liable on the claim under section 53-2-404, Idaho Code. [I.C., § 53-2-807, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 54, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (2)(a), substituted "Ada county" for "the county," and deleted "in

which the limited partnership's designated office is or was last located" from the end.

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 808. See also RMBCA Section 14.07.

Paragraph (b)(4) — If the limited partnership has always been a limited liability

limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

53-2-808. Liability of general partner and person dissociated as general partner when claim against limited partnership barred. — If a claim against a dissolved limited partnership is barred under section 53-2-806 or 53-2-807, Idaho Code, any corresponding claim under section 53-2-404, Idaho Code, is also barred. [I.C., § 53-2-808, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

The liability under Section 404 of a general partner or person dissociated as a general

partner is merely liability for the obligations of the limited partnership.

53-2-809. Administrative dissolution. — (1) The secretary of state may dissolve a limited partnership administratively if:

(a) The limited partnership does not deliver its annual report to the secretary of state within sixty (60) days of its due date; or

(b) The limited partnership is without a registered agent or registered office in this state for sixty (60) days or more.

(2) If the secretary of state determines that a ground exists for administratively dissolving a limited partnership, the secretary of state shall mail a notice of dissolution to the limited partnership.

(3) If within sixty (60) days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall administratively dissolve the limited partnership by noting the fact of dissolution and the effective date thereof in his records. The secretary of state shall give notice of the dissolution to the limited partnership by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the limited partnership has not yet filed an annual report, to its principal office.

(4) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 53-2-803 and 53-2-812, Idaho Code, and to notify claimants under sections 53-2-806 and 53-2-807, Idaho Code.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent. [I.C., § 53-2-809, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Sections 809 and 810. See also RMBCA Sections 14.20 and 14.21.

Subsection (a)(1) — This provision refers

solely to money due the specified filing officer and does not apply to other money due to the State.

Subsection (c) — The filing of a declaration of dissolution does not provide notice under Section 103(d).

53-2-810. Reinstatement following administrative dissolution. —

(1) A limited partnership administratively dissolved under section 53-2-809, Idaho Code, may apply to the secretary of state for reinstatement within ten (10) years after the effective date of dissolution. The application must:

- (a) Recite the name of the limited partnership at the time of its dissolution and the date of its organization;
- (b) State that the limited partnership applies for reinstatement;
- (c) State that the limited partnership's proposed name satisfies the requirements of section 53-2-108, Idaho Code; and
- (d) Be accompanied by a current annual report or appointment of registered agent, as appropriate to the reason for administrative dissolution.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the dissolution and prepare a certificate of reinstatement that recites the fact and effective date of the reinstatement, file a copy thereof and return the original to the limited partnership.

(3) When the reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes carrying on its business as if the administrative dissolution had never occurred. [I.C., § 53-2-810, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 811. See also RMBCA Section 14.22.

53-2-811. Appeal from denial of reinstatement. — (1) If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign and file a notice that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.

(2) Within thirty (30) days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning the court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the limited partnership's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved limited partnership or may take other action the court considers appropriate. [I.C., § 53-2-811, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 812.

53-2-812. Disposition of assets — When contributions required.

— (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) of this section must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) of this section, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 53-2-607, Idaho Code, shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under paragraph (a) of this subsection with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (a) of this subsection on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by paragraph (b) of this subsection, further additional contributions are determined and due in the same manner as provided in that paragraph.

(4) A person that makes an additional contribution under subsection (3)(b) or (c) of this section may recover from any person whose failure to contribute under subsection (3)(a) or (b) of this section necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (3) of this section. [I.C., § 53-2-812, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

In some circumstances, this Act requires a partner to make payments to the limited partnership. See, e.g., Sections 502(b), 509(a), 509(b), and 812(c). In other circumstances, this Act requires a partner to make payments to other partners. See, e.g., Sections 509(c) and 812(d). In no circumstances does this Act require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

Example: XYZ Limited Partnership ("XYZ") has one general partner and four limited partners. According to XYZ's required information, the value of each partner's contributions to XYZ are:

General partner — \$5,000
 Limited partner #1 — \$10,000
 Limited partner #2 — \$15,000
 Limited partner #3 — \$20,000
 Limited partner #4 — \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distri-

bution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited partnership or to fellow partners to adjust these capital losses. These losses are not part of "the limited partnership's obligations to creditors." Section 812(a).

Example: Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (c).

Subsection (c) — Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

PART 9. FOREIGN LIMITED PARTNERSHIPS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-901. Governing law. — (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state. [I.C., § 53-2-901, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1001 for subsections (b) and (c).

Subsection (a) — This subsection paral-

els and is analogous in scope and effect to Section 106 (choice of law for domestic limited partnerships).

53-2-902. Application for certificate of authority. — (1) A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

- (a) The name of the foreign limited partnership and, if the name does not comply with section 53-2-108, Idaho Code, an alternate name adopted pursuant to section 53-2-905(1), Idaho Code;
- (b) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (c) The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;
- (d) The information required by section 30-405(1), Idaho Code;
- (e) The name and street and mailing address of each of the foreign limited partnership's general partners; and
- (f) Whether the foreign limited partnership is a foreign limited liability limited partnership.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized. [I.C., § 53-2-902, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 55, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (1)(d), which formerly read: "The name and street and

mailing address of the foreign limited partnership's initial agent for service of process in this state."

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1002.

A certificate of authority applied for under

this section is different than a certificate of authorization furnished under Section 209.

53-2-903. Activities not constituting transacting business. —

(1) Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this part 9 include:

- (a) Maintaining, defending, and settling an action or proceeding;
- (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (c) Maintaining accounts in financial institutions;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions of a like manner; and

(j) Transacting business in interstate commerce.

(2) For purposes of this part 9, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state. [I.C., § 53-2-903, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1003.

53-2-904. Filing of certificate of authority. — Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative. [I.C., § 53-2-904, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1004 and RULPA Section 903. section is different than a certificate of authorization furnished under Section 209.

A certificate of authority filed under this

53-2-905. Noncomplying name of foreign limited partnership. — (1) A foreign limited partnership whose name does not comply with section 53-2-108, Idaho Code, may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 53-2-108, Idaho Code. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 53-2-108, Idaho Code, it may not thereafter transact business in this state until it

complies with subsection (1) of this section and obtains an amended certificate of authority. [I.C., § 53-2-905, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1005.

53-2-906. Revocation of certificate of authority. — (1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) of this section if the foreign limited partnership does not:

- (a) Pay, within sixty (60) days after the due date, any fee, tax or penalty due to the secretary of state under this chapter or other law;
- (b) Deliver, within sixty (60) days after the due date, its annual report required under section 53-2-210, Idaho Code;
- (c) Appoint and maintain an agent for service of process as required by section 30-405(1), Idaho Code; or
- (d) Deliver for filing a statement of a change within thirty (30) days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's principal office. The notice must state:

- (a) The revocation's effective date, which must be at least sixty (60) days after the date the secretary of state sends the copy; and
- (b) The foreign limited partnership's failures to comply with subsection (1) of this section which are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice. [I.C., § 53-2-906, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 56, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, updated the section reference in subsection (1)(c); in subsection (1)(d), deleted "under section 53-2-115, Idaho Code" follow-

ing "statement of change"; and in the introductory paragraph in subsection (2), substituted "principal office" for "designated office."

COMMENT TO OFFICIAL TEXT

Source — ULLCA Section 1006.

53-2-907. Cancellation of certificate of authority — Effect of failure to have certificate. — (1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 53-2-206, Idaho Code.

(2) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(4) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state. [I.C., § 53-2-907, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 907(d); ULLCA Section 1008.

53-2-908. Action by attorney general. — The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this part 9. [I.C., § 53-2-908, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 908; ULLCA Section 1009.

PART 10. ACTIONS BY PARTNERS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-1001. Direct action by partner. — (1) Subject to subsection (2) of this section, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without

an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. [I.C., § 53-2-1001, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Subsection (a) — Source: RUPA Section 405(b).

Subsection (b) — In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. A partner does not have a direct claim against another partner merely because the other partner has breached the partnership agreement. Likewise a partner's violation of this

Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

The reference to "threatened" harm is intended to encompass claims for injunctive relief and does not relax standards for proving injury.

53-2-1002. Derivative action. — A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) A demand would be futile. [I.C., § 53-2-1002, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 1001.

53-2-1003. Proper plaintiff. — A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) That was a partner when the conduct giving rise to the action occurred; or

(2) Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct. [I.C., § 53-2-1003, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 1002.

53-2-1004. Pleading. — In a derivative action, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the general partners' response to the demand; or

(2) Why demand should be excused as futile. [I.C., § 53-2-1004, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 1003.

53-2-1005. Proceeds and expenses. — (1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership. [I.C., § 53-2-1005, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source — RULPA Section 1004.

PART 11. CONVERSION AND MERGER

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act

and in the legislation enacted in Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-1100. Applicability of Idaho entity transactions act. — (1) Unless the participating entity is excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger or a conversion in which a limited partnership is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Sections 53-2-1103, 53-2-1107 and 53-2-1110, Idaho Code, apply to transactions in which a limited partnership is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code. [I.C., § 53-2-1100, as added by 2007, ch. 116, § 8, p. 333.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

53-2-1101. Definitions. — In this part 11:

(1) “Constituent limited partnership” means a constituent organization that is a limited partnership.

(2) “Constituent organization” means an organization that is party to a merger.

(3) “Converted organization” means the organization into which a converting organization converts pursuant to sections 53-2-1102 through 53-2-1105, Idaho Code.

(4) “Converting limited partnership” means a converting organization that is a limited partnership.

(5) “Converting organization” means an organization that converts into another organization pursuant to section 53-2-1102, Idaho Code.

(6) “General partner” means a general partner of a limited partnership.

(7) “Governing statute” of an organization means the statute that governs the organization’s internal affairs.

(8) “Organization” means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) “Organizational documents” means:

(a) For a domestic or foreign general partnership, its partnership agreement;

(b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(d) For a business trust, its agreement of trust and declaration of trust;

(e) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(f) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) “Personal liability” means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization’s governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) By the organization’s organizational documents under a provision of the organization’s governing statute authorizing those documents to make one (1) or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) “Surviving organization” means an organization into which one (1) or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger. [I.C., § 53-2-1101, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section contains definitions specific to this Article.

53-2-1102. Conversion. — (1) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to this section and sections 53-2-1103 through 53-2-1105, Idaho Code, and a plan of conversion, if:

- (a) The other organization’s governing statute authorizes the conversion;
 - (b) The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - (c) The other organization complies with its governing statute in effecting the conversion.
- (2) A plan of conversion must be in a record and must include:
- (a) The name and form of the organization before conversion;
 - (b) The name and form of the organization after conversion; and
 - (c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
 - (d) The organizational documents of the converted organization. [I.C., § 53-2-1102, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

In a statutory conversion an existing entity changes its form, the jurisdiction of its governing statute or both. For example, a limited partnership organized under the laws of one jurisdiction might convert to:

- a limited liability company (or other form of entity) organized under the laws of the same jurisdiction,
- a limited liability company (or other form of entity) organized under the laws of another jurisdiction, or
- a limited partnership organized under the laws of another jurisdiction (referred to in some statutes as “domestication”).

In contrast to a merger, which involves at least two entities, a conversion involves only one. The converting and converted organization are the same entity. See Section 1105(a). For this Act to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Act. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act,

including Sections 304 (informational rights of limited partners), 305(b) (limited partner’s obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

Subsection (a)(2) — Given the very broad definition of “organization,” Section 1101(8), this Act authorizes conversions involving non-profit organizations. This provision is intended as an additional safeguard for that context.

Subsection (b)(3) — A plan of conversion may provide that some persons with interests in the converting organization will receive interests in the converted organization while other persons with interests in the converting organization will receive some other form of consideration. Thus, a “squeeze out” conversion is possible. As noted above, if the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the plan of conversion will determine the fate of any interests held by mere transferees. This Act does not state any duty

or obligation owed by a converting limited partnership or its partners to mere transferees. That issue is a matter for other law.

53-2-1103. Action on plan of conversion by converting limited partnership. — (1) Subject to section 53-2-1110, Idaho Code, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to section 53-2-1110, Idaho Code, and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 53-2-1104, Idaho Code, a converting limited partnership may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same consent as was required to approve the plan. [I.C., § 53-2-1103, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Section 1110 imposes special consent requirements for transactions which might cause a partner to have “personal liability,” as defined in Section 1101(10) for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

Subsection (a) — Like many of the rules stated in this Act, this subsection’s requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection’s rule means that a partner might be subject to

a conversion (including a “squeeze out” conversion) without consent and with no appraisal remedy. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which the conversion occurs. However, if the partnership agreement allows for a conversion with less than unanimous consent, the mere fact a partner objects to a conversion does not mean that the partners favoring, arranging, consenting to or effecting the conversion have breached a duty under this Act.

53-2-1104. Filings required for conversion — Effective date. —

(1) After a plan of conversion is approved:

(a) A converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(i) A statement that the limited partnership has been converted into another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by this chapter;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address

of an office which may be used for service of process under section 53-2-1105(3), Idaho Code; and

(b) If the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by section 53-2-201, Idaho Code:

(i) A statement that the limited partnership was converted from another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) A conversion becomes effective:

(a) If the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization. [I.C., § 53-2-1104, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 57, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “which may be used for service of process under section 53-2-1105(3)”

for “which the secretary of state may use for the purposes of section 53-2-1105(3)” in subsection (1)(a)(vi).

COMMENT TO OFFICIAL TEXT

Subsection (b) — The effective date of a conversion is determined under the governing statute of the converted organization.

53-2-1105. Effect of conversion. — (1) An organization that has been converted pursuant to this part 11 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting organization remains vested in the converted organization;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of part 8 of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the

converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required under section 53-2-1104(1)(a)(vi), Idaho Code. [I.C., § 53-2-1105, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 58, p. 887.]

STATUTORY NOTES

Compiler's Notes. — The 2007 amendment, by ch. 314, in subsection (3), substituted the last sentence for the two former last sentences, which read: "A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for

service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection (3) is made in the same manner and with the same consequences as in section 53-2-117(3) and (4), Idaho Code."

COMMENT TO OFFICIAL TEXT

Subsection (a) — A conversion changes an entity's legal type, but does not create a new entity.

Subsection (b) — Unlike a merger, a con-

version involves a single entity, and the conversion therefore does not transfer any of the entity's rights or obligations.

53-2-1106. Merger. — (1) A limited partnership may merge with one (1) or more other constituent organizations pursuant to this section and sections 53-2-1107 through 53-2-1109, Idaho Code, and a plan of merger, if:

(a) The governing statute of each of the other organizations authorizes the merger;

(b) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(e) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents. [I.C., § 53-2-1106, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

For this Act to apply to a merger, at least one of the constituent organizations must be a

limited partnership subject to this Act. The partners of any such limited partnership are

subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner's obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

Subsection (a)(2) — Given the very broad definition of “organization,” Section 1101(8), this Act authorizes mergers involving non-profit organizations. This provision is intended as an additional safeguard for that context.

Subsection (b)(3) — A plan of merger may provide that some persons with interests in a constituent organization will receive interests in the surviving organization, while other persons with interests in the same constitu-

ent organization will receive some other form of consideration. Thus, a “squeeze out” merger is possible. As noted above, the duties and obligations stated in this Act apply to the partners of a constituent organization that is a limited partnership subject to this Act. Those duties would apply to the process and terms under which a squeeze out merger occurs.

If a constituent organization is a limited partnership, the plan of merger will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a constituent limited partnership or its partners to mere transferees. That issue is a matter for other law.

53-2-1107. Action on plan of merger by constituent limited partnership. — (1) Subject to section 53-2-1110, Idaho Code, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to section 53-2-1110, Idaho Code, and any contractual rights, after a merger is approved, and at any time before a filing is made under section 53-2-1108, Idaho Code, a constituent limited partnership may amend the plan or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan. [I.C., § 53-2-1107, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Section 1110 imposes special consent requirements for transactions which might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

Subsection (a) — Like many of the rules stated in this Act, this subsection's requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection's rule means that a partner might be subject to

a merger (including a “squeeze out” merger) without consent and with no appraisal remedy. The partners of a constituent limited partnership are subject to the duties and obligations stated in this Act, and those duties would apply to the process and terms under which the merger occurs. However, if the partnership agreement allows for a merger with less than unanimous consent, the mere fact a partner objects to a merger does not mean that the partners favoring, arranging, consenting to or effecting the merger have breached a duty under this Act.

53-2-1108. Filings required for merger — Effective date. — (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) Each other preexisting constituent organization, by an authorized representative.

(2) The articles of merger must include:

- (a) The name and form of each constituent organization and the jurisdiction of its governing statute;
 - (b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;
 - (c) The date the merger is effective under the governing statute of the surviving organization;
 - (d) If the surviving organization is to be created by the merger:
 - (i) If it will be a limited partnership, the limited partnership's certificate of limited partnership; or
 - (ii) If it will be an organization other than a limited partnership, the organizational document that creates the organization;
 - (e) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;
 - (f) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;
 - (g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which may be used for service of process under section 53-2-1109(2), Idaho Code; and
 - (h) Any additional information required by the governing statute of any constituent organization.
- (3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.
- (4) A merger becomes effective under this part 11:
- (a) If the surviving organization is a limited partnership, upon the later of:
 - (i) Compliance with subsection (3) of this section; or
 - (ii) Subject to section 53-2-206(3), Idaho Code, as specified in the articles of merger; or
 - (b) If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization. [I.C., § 53-2-1108, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 59, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “which may be used for service of process under section 53-2-1109(2)”

for “which the secretary of state may use for the purposes of section 53-3-1109(2)” in subsection (2)(g).

COMMENT TO OFFICIAL TEXT

Subsection (b) — The effective date of a merger is determined under the governing statute of the surviving organization.

53-2-1109. Effect of merger. — (1) When a merger becomes effective:

- (a) The surviving organization continues or comes into existence;

- (b) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (c) All property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (d) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
- (e) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (f) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- (g) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and
- (h) Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of part 8 of this chapter;

(i) If the surviving organization is created by the merger:

(i) If it is a limited partnership, the certificate of limited partnership becomes effective; or

(ii) If it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(j) If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of merger under section 53-2-1108(2)(g), Idaho Code. [I.C., § 53-2-1109, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 60, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (2), substituted the last sentence for the two former last sentences, which read: “A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for

service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 53-2-117(3) and (4), Idaho Code.”

COMMENT TO OFFICIAL TEXT

53-2-1110. Restrictions on approval of conversions and mergers and on relinquishing LLLP status. — (1) If a partner of a converting or

constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

- (a) The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and
- (b) The partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

- (a) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and
- (b) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) of this section merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners. [I.C., § 53-2-1110, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section imposes special consent requirements for transactions that might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by this section. See Section 110(b)(12).

Subsection (c) — This subsection prevents circumvention of the consent requirements of subsections (a) and (b).

Example: As initially a consented to, the partnership agreement of a limited partnership leaves in place the Act's rule requiring unanimous consent for a conversion or merger. The partnership agreement does provide, however, that the agreement may be amended with the affirmative vote of general partners owning 2/3 of the rights to receive distributions as general partners and of limited partners owning 2/3 of the rights to receive distributions as limited partners. The required vote is obtained for an amendment that permits approval of a conversion or merger by the same vote necessary to amend the partnership agreement. Partner X votes for the amendment. Partner Y votes against. Partner Z does not vote.

Subsequently the limited partnership proposes to convert to a limited partnership (not an LLLP) organized under the laws of another state, with Partners X, Y and Z each receiving interests as general partners. Under the amended partnership agreement, approval of the conversion does not require unanimous consent. However, since after the conversion, Partners X, Y and Z will each have "personal liability with respect to [the] converted ... organization," Section 1110(a) applies.

As a result, the approval of the plan of conversion will require the consent of Partner Y and Partner Z. They did not consent to the amendment that provided for non-unanimous approval of a conversion or merger. Their initial consent to the partnership agreement, with its provision permitting non-unanimous consent for amendments, does not satisfy the consent requirement of Subsection 1110(a)(2).

In contrast, Partner X's consent is not required. Partner X lost its Section 1110(a) veto right by consenting directly to the amendment to the partnership agreement which permitted non-unanimous consent to a conversion or merger.

53-2-1111. Liability of general partner after conversion or merger. — (1) A conversion or merger under this part 11 does not discharge any liability under sections 53-2-404 and 53-2-607, Idaho Code, of a person

that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

- (a) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
- (b) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and
- (c) If a person is required to pay any amount under this subsection:

- (i) The person has a right of contribution from each other person that was liable as a general partner under section 53-2-404, Idaho Code, when the obligation was incurred and has not been released from the obligation under section 53-2-607, Idaho Code; and
- (ii) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

- (2) In addition to any other liability provided by law:

(a) A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

- (i) Does not have notice of the conversion or merger; and
- (ii) Reasonably believes that:

- (A) The converted or surviving business is the converting or constituent limited partnership;
- (B) The converting or constituent limited partnership is not a limited liability limited partnership; and
- (C) The person is a general partner in the converting or constituent limited partnership; and

(b) A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

- (i) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and
- (ii) At the time the third party enters into the transaction less than two (2) years have passed since the person dissociated as a general partner and the third party:

- (A) Does not have notice of the dissociation;
- (B) Does not have notice of the conversion or merger; and
- (C) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or

constituent limited partnership. [I.C., § 53-2-1111, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section extrapolates the approach of Section 607 into the context of a conversion or merger involving a limited partnership.

Subsection (a) — This subsection pertains to general partner liability for obligations which a limited partnership incurred before a conversion or merger. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

If the converting or constituent limited partnership was a limited liability limited partnership at all times before the conversion or merger, this subsection will not apply because no person will have any liability under Section 404 or 607.

Subsection (b) — This subsection pertains to entity obligations incurred after a conversion or merger and creates lingering exposure to personal liability for general partners and persons previously dissociated as general

partners. In contrast to subsection (a)(3), this subsection does not provide for contribution among persons personally liable under this section for the same entity obligation. That issue is left for other law.

Subsection (b)(1) — If the converting or constituent limited partnership was a limited liability limited partnership immediately before the conversion or merger, there is no lingering exposure to personal liability under this subsection.

Subsection (b)(1)(A) — A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

Subsection (b)(2)(B)(i) — A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B)(ii) — A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

53-2-1112. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. —

(1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 53-2-402, Idaho Code; and

(b) At the time the third party enters into the transaction, the third party:

(i) Does not have notice of the conversion or merger; and

(ii) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 53-2-402, Idaho Code, if the person had been a general partner; and

(b) At the time the third party enters into the transaction, less than two (2) years have passed since the person dissociated as a general partner and the third party:

(i) Does not have notice of the dissociation;

(ii) Does not have notice of the conversion or merger; and

- (iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.
- (3) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (1) or (2) of this section, the person is liable:
- (a) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and
 - (b) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability. [I.C., § 53-2-1112, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

This section extrapolates the approach of Section 606 into the context of a conversion or merger involving a limited partnership.

Subsection (a)(2)(A) — A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

Subsection (b)(2)(A) — A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B) — A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

53-2-1113. Part not exclusive. — This part 11 does not preclude an entity from being converted or merged under other law. [I.C., § 53-2-1113, as added by 2006, ch. 144, § 2, p. 407.]

PART 12. MISCELLANEOUS PROVISIONS

STATUTORY NOTES

Compiler's Notes. — To assist the user of this code, the official comments to the Uniform Limited Partnership Act have been set out herein. Note that because of some variances, e.g., the designation schemes in the uniform act and in the legislation enacted in

Idaho vary and Idaho did not enact all of the defined terms from section 102 of the uniform act, references within the comments from the uniform act may not match the text enacted by S.L. 2006, ch. 144.

53-2-1201. Uniformity of application and construction. — In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [I.C., § 53-2-1201, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1202. Severability clause. — If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [I.C., § 53-2-1202, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1203. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C.

section 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act. [I.C., § 53-2-1203, as added by 2006, ch. 144, § 2, p. 407.]

STATUTORY NOTES

Federal References. — The reference to “section 103(b) of that act”, at the end of the section, is to section 103(b) of the Electronic

Signatures in Global and National Commerce Act, codified as 15 U.S.C. § 7003(b).

53-2-1204. Application to existing relationships. — (1) This chapter governs only:

- (a) A limited partnership formed on or after July 1, 2006; and
- (b) Except as otherwise provided in subsections (3) and (4) of this section, a limited partnership formed before July 1, 2006, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(2) Except as otherwise provided in subsection (3) of this section, on and after July 1, 2006, this chapter governs all limited partnerships.

(3) With respect to a limited partnership formed before July 1, 2006, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 53-2-104(3), Idaho Code, does not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2006.

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with section 53-2-201(1)(d), Idaho Code.

(c) Sections 53-2-601 and 53-2-602, Idaho Code, do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before July 1, 2006.

(d) Section 53-2-603(4), Idaho Code, does not apply.

(e) Section 53-2-603(5), Idaho Code, does not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2006.

(f) Section 53-2-801(4) and (5), Idaho Code, does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2006.

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) of this section to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(a) Before July 1, 2006, to:

- (i) A third party that had not done business with the limited partnership in the year before the election took effect; and

- (ii) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and
- (b) On and after July 1, 2006, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subsection (4)(a)(ii) of this section. [I.C., § 53-2-1204, as added by 2006, ch. 144, § 2, p. 407.]

COMMENT TO OFFICIAL TEXT

Source: RUPA Section 1206.

This section pertains exclusively to domestic limited partnerships — i.e., to limited partnerships formed under this Act or a predecessor statute enacted by the same jurisdiction. For foreign limited partnerships, see the Comment to Section 1204.

This Act governs all limited partnerships formed on or after the Act's effective date. As for pre-existing limited partnerships, this section establishes an optional "elect in" period and a mandatory, all-inclusive date. The "elect in" period runs from the effective date, stated in Section 1204, until the all-inclusive date, stated in both subsections (a) and (b).

During the "elect in" period, a pre-existing limited partnership may elect to become subject to this Act. Subsection (d) states certain important consequences for a limited partnership that elects in. Beginning on the all-inclusive date, each pre-existing limited partnership that has not previously elected in becomes subject to this Act by operation of law.

Subsection (c) — This subsection specifies six provisions of this Act which never automatically apply to any pre-existing limited partnership. Except for subsection (c)(2), the list refers to provisions governing the relationship of the partners *inter se* and considered too different than predecessor law to be fairly applied to a preexisting limited partnership without the consent of its partners. Each of these *inter se* provisions is subject to change in the partnership agreement. However, many pre-existing limited partnerships may have taken for granted the analogous provisions of predecessor law and may therefore not have addressed the issues in their partnership agreements.

Subsection (c)(1) — Section 104(c) provides that a limited partnership has a perpetual duration.

Subsection (c)(2) — Section 201(a)(4) requires the certificate of limited partnership to state "whether the limited partnership is a limited liability limited partnership." The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP and therefore is inapposite to pre-existing limited

partnerships. Moreover, applying the requirement to pre-existing limited partnerships would create a significant administrative burden both for limited partnerships and the filing officer and probably would result in many pre-existing limited partnerships being in violation of the requirement.

Subsection (c)(3) — Section 601 and 602 concern a person's dissociation as a limited partner.

Subsection (c)(4) — Section 603(4) provides for the expulsion of a general partner by the unanimous consent of the other partners in specified circumstances.

Subsection (c)(5) — Section 603(5) provides for the expulsion of a general partner by a court in specified circumstances.

Subsection (c)(6) — Section 801(3) concerns the continuance or dissolution of a limited partnership following a person's dissociation as a general partner.

Subsection (d) — Following RUPA Section 1206(c), this subsection limits the efficacy of the Act's liability protections for partners of an "electing in" limited partnership. The limitation:

- applies only to the benefit of "a third party that had done business with the limited partnership in the year before the election took effect," and
- ceases to apply when "the third party knows or has received a notification of the election" or on the "all-inclusive" date, whichever occurs first.

If the limitation causes a provision of this Act to be inapplicable with regard to a third party, the comparable provision of predecessor law applies.

Example: A pre-existing limited partnership elects to be governed by this Act before the "all-inclusive" date. Two months before the election, Third Party provided services to the limited partnership. Third Party neither knows nor has received a notification of the election. Until the "all inclusive" date, with regard to Third Party, Section 303's full liability shield does not apply to each limited partner. Instead, each limited partner has the liability shield applicable under predecessor law.

Subsection (d)(2) — To the extent subsec-

tion (d) causes a provision of this Act to be inapplicable when an obligation is incurred,

the inapplicability continues as to that obligation even after the "all inclusive" date.

53-2-1205. Savings clause. — This act does not affect an action commenced, proceeding brought, or right accrued before this act takes effect. [I.C., § 53-2-1205, as added by 2006, ch. 144, § 2, p. 407.]

CHAPTER 3

UNIFORM PARTNERSHIP LAW

SECTION.

53-301 — 53-343C. [Repealed.]

PART 1. GENERAL PROVISIONS

- 53-3-101. Definitions.
- 53-3-102. Knowledge and notice.
- 53-3-103. Effect of partnership agreement —
Nonwaivable provisions.
- 53-3-104. Supplemental principles of law.
- 53-3-105. Execution and filing of statements.
- 53-3-105A. Fees.
- 53-3-106. Governing law.
- 53-3-107. Partnership subject to amendment
or repeal of act.

PART 2. NATURE OF PARTNERSHIP

- 53-3-201. Partnership as entity.
- 53-3-202. Formation of partnership.
- 53-3-203. Partnership property.
- 53-3-204. When property is partnership
property.

PART 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

- 53-3-301. Partner agent of partnership.
- 53-3-302. Transfer of partnership property.
- 53-3-303. Statement of partnership author-
ity.
- 53-3-304. Statement of denial.
- 53-3-305. Partnership liable for partner's ac-
tionable conduct.
- 53-3-306. Partner's liability.
- 53-3-307. Actions by and against partnership
and partners.
- 53-3-308. Liability of purported partner.

PART 4. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

- 53-3-401. Partner's rights and duties.
- 53-3-402. Distributions in kind.
- 53-3-403. Partner's rights and duties with
respect to information.
- 53-3-404. General standards of partner's con-
duct.
- 53-3-405. Actions by partnership and part-
ners.
- 53-3-406. Continuation of partnership be-
yond definite term or particu-
lar undertaking.

PART 5. TRANSFEREES AND CREDITORS OF PARTNER

SECTION.

- 53-3-501. Partner not co-owner of partner-
ship property.
- 53-3-502. Partner's transferable interest in
partnership.
- 53-3-503. Transfer of partner's transferable
interest.
- 53-3-504. Partner's transferable interest
subject to charging order.

PART 6. PARTNER'S DISSOCIATION

- 53-3-601. Events causing partner's dissocia-
tion.
- 53-3-602. Partner's power to dissociate —
Wrongful dissociation.
- 53-3-603. Effect of partner's dissociation.

PART 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

- 53-3-701. Purchase of dissociated partner's
interest.
- 53-3-701A. Dissolution within ninety days
after dissociation.
- 53-3-702. Dissociated partner's power to bind
and liability to partnership.
- 53-3-703. Dissociated partner's liability to
other persons.
- 53-3-704. Statement of dissociation.
- 53-3-705. Continued use of partnership
name.

PART 8. WINDING UP PARTNERSHIP BUSINESS

- 53-3-801. Events causing dissolution and
winding up of partnership
business.
- 53-3-802. Partnership continues after disso-
lution.
- 53-3-803. Right to wind up partnership busi-
ness.
- 53-3-804. Partner's power to bind partner-
ship after dissolution.
- 53-3-805. Statement of dissolution.
- 53-3-806. Partner's liability to other partners
after dissolution.
- 53-3-807. Settlement of accounts and contri-
butions among partners.

PART 9. CONVERSIONS AND MERGERS

SECTION.

53-3-901. Definitions.

53-3-901A. Applicability of Idaho entity transactions act.

53-3-902. Conversion of partnership to limited partnership.

53-3-903. Conversion of limited partnership to partnership.

53-3-904. Effect of conversion — Entity unchanged.

53-3-905. Merger of partnerships.

53-3-906. Effect of merger.

53-3-907. Statement of merger.

53-3-908. Nonexclusive.

PART 10. LIMITED LIABILITY PARTNERSHIP

53-3-1001. Statement of qualification.

53-3-1001A. Consolidated statement of partnership authority and qualification.

53-3-1001B. Change of registered agent.

SECTION.

53-3-1002. Name.

53-3-1003. Annual report.

53-3-1003A. Revocation of statement of qualification.

PART 11. FOREIGN LIMITED LIABILITY PARTNERSHIP

53-3-1101. Law governing foreign limited liability partnership.

53-3-1102. Statement of foreign qualification.

53-3-1103. Effect of failure to qualify.

53-3-1104. Activities not constituting transacting business.

53-3-1105. Action by attorney general.

PART 12. MISCELLANEOUS PROVISIONS

53-3-1201. Uniformity of application and construction.

53-3-1202. Short title.

53-3-1203. Severability clause.

53-3-1204. Applicability.

53-3-1205. Savings clause.

53-301 — 53-343C. Uniform Partnership Law. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed effective July 1, 2001, pursuant to S.L. 1998, ch. 65, §§ 1 and 3:

53-301, which comprised as 1919, ch. 154, § 1, p. 493; C.S., § 5813; I.C.A., § 52-301.

53-302, which comprised as 1919, ch. 154, § 2, p. 493; C.S., § 5814; I.C.A., § 52-302; am. 1935, ch. 29, § 1, p. 52; am. 1995, ch. 92, § 1, p. 263.

53-303, which comprised as 1919, ch. 154, § 3, p. 493; C.S., § 5815; I.C.A., § 52-303.

53-304, which comprised as 1919, ch. 154, § 4, p. 493; C.S., § 5816; I.C.A., § 52-304.

53-305, which comprised as 1919, ch. 154, § 5, p. 493; C.S., § 5817; I.C.A., § 52-305.

53-306, which comprised as 1919, ch. 154, § 6, p. 493; C.S., § 5818; I.C.A., § 52-306; am. 1995, ch. 92, § 2, p. 263.

53-307, which comprised as 1919, ch. 154, § 7, p. 493; C.S., § 5819; I.C.A., § 52-307.

53-308, which comprised as 1919, ch. 154, § 8, p. 493; C.S., § 5820; I.C.A., § 52-308.

53-309, which comprised as 1919, ch. 154, § 9, p. 493; C.S., § 5821; I.C.A., § 52-309.

53-310, which comprised as 1919, ch. 154, § 10, p. 493; C.S., § 5822; I.C.A., § 52-310.

53-311, which comprised as 1919, ch. 154, § 11, p. 493; C.S., § 5823; I.C.A., § 53-311.

53-312, which comprised as 1919, ch. 154, § 12, p. 493; C.S., § 5824; I.C.A., § 52-312.

53-313, which comprised as 1919, ch. 154, § 13, p. 493; C.S., § 5825; I.C.A., § 52-313.

53-314, which comprised as 1919, ch. 154, § 14, p. 493; C.S., § 5826; I.C.A., § 52-314.

53-315, which comprised as 1919, ch. 154,

§ 15, p. 493; C.S., § 5827; I.C.A., § 52-315; am. 1995, ch. 92, § 3, p. 263.

53-316, which comprised as 1919, ch. 154, § 16, p. 493; C.S., § 5828; I.C.A., § 52-316.

53-317, which comprised as 1919, ch. 154, § 17, p. 493; C.S., § 5829; I.C.A., § 52-317.

53-318, which comprised as 1919, ch. 154, § 18, p. 493; C.S., § 5830; I.C.A., § 52-318;

am. 1995, ch. 92, § 4, p. 263.

53-319, which comprised as 1919, ch. 154, § 19, p. 493; C.S., § 5831; I.C.A., § 52-319.

53-320, which comprised as 1919, ch. 154, § 20, p. 493; C.S., § 5832; I.C.A., § 52-320.

53-321, which comprised as 1919, ch. 154, § 21, p. 493; C.S., § 5833; I.C.A., § 52-321.

53-322, which comprised as 1919, ch. 154, § 22, p. 493; C.S., § 5834; I.C.A., § 52-322.

53-323, which comprised as 1919, ch. 154, § 23, p. 493; C.S., § 5835; I.C.A., § 52-323.

53-324, which comprised as 1919, ch. 154, § 24, p. 493; C.S., § 5836; I.C.A., § 52-324.

53-325, which comprised as 1919, ch. 154, § 25, p. 493; C.S., § 5837; I.C.A., § 52-325.

53-326, which comprised as 1919, ch. 154, § 26, p. 493; C.S., § 5838; I.C.A., § 52-326.

53-327, which comprised as 1919, ch. 154, § 27, p. 493; C.S., § 5839; I.C.A., § 52-327.

53-328, which comprised as 1919, ch. 154, § 28, p. 493; C.S., § 5840; I.C.A., § 52-328.

53-329, which comprised as 1919, ch. 154, § 29, p. 493; C.S., § 5841; I.C.A., § 52-329.

53-330, which comprised as 1919, ch. 154, § 30, p. 493; C.S., § 5842; I.C.A., § 52-330.

53-331, which comprised as 1919, ch. 154, § 31, p. 493; C.S., § 5843; I.C.A., § 52-331.

53-332, which comprised as 1919, ch. 154, § 32, p. 493; C.S., § 5844; I.C.A., § 52-332.

53-333, which comprised as 1919, ch. 154, § 33, p. 493; C.S., § 5845; I.C.A., § 52-333; am. 1995, ch. 92, § 5, p. 263.

53-334, which comprised as 1919, ch. 154, § 34, p. 493; C.S., § 5846; I.C.A., § 52-334; am. 1995, ch. 92, § 5, p. 263.

53-335, which comprised as 1919, ch. 154, § 35, p. 493; C.S., § 5847; I.C.A., § 52-335.

53-336, which comprised as 1919, ch. 154, § 36, p. 493; C.S., § 5848; I.C.A., § 52-336; am. 1995, ch. 92, § 6, p. 263.

53-337, which comprised as 1919, ch. 154, § 37, p. 493; C.S., § 5849; I.C.A., § 52-337.

53-338, which comprised as 1919, ch. 154, § 38, p. 493; C.S., § 5850; I.C.A., § 52-338.

53-339, which comprised as 1919, ch. 154,

§ 39, p. 493; C.S., § 5851; I.C.A., § 52-339.

53-340, which comprised as 1919, ch. 154, § 40, p. 493; C.S., § 5852; I.C.A., § 52-340; am. 1995, ch. 92, § 7, p. 263.

53-341, which comprised as 1919, ch. 154, § 41, p. 493; C.S., § 5853; I.C.A., § 52-341.

53-342, which comprised as 1919, ch. 154, § 42, p. 493; C.S., § 5854; I.C.A., § 52-342.

53-343, which comprised as 1919, ch. 154, § 43, p. 493; C.S., § 5855; I.C.A., § 52-343.

53-343A, which comprised as I.C., § 53-343A, as added by 1995, ch. 92, § 8, p. 263; am. 1997, ch. 151, § 4, p. 429.

53-343B, which comprised as I.C., § 53-343B, as added by 1995, ch. 92, § 9, p. 263.

53-343C, which comprised as I.C., § 53-343C, as added by 1995, ch. 92, § 10, p. 263.

PART 1. GENERAL PROVISIONS

53-3-101. Definitions. — In this act:

- (1) "Business" includes every trade, occupation and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:
 - (i) An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (ii) Comparable order under federal, state, or foreign law governing insolvency.
- (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- (4) "Execution" means any signature, mark or symbol affixed to a writing with the intent to authenticate the writing. It includes an electronically transmitted signature or symbol.
- (5) "Foreign limited liability partnership" means a partnership that:
 - (i) Is formed under laws other than the laws of this state; and
 - (ii) Has the status of a limited liability partnership under those laws.
- (6) "Legal entity" means an association of one (1) or more persons created pursuant to statute for the purpose of transacting business, whether for profit or otherwise. It includes, but is not limited to, a corporation, a limited liability company, a partnership or a limited liability partnership.
- (7) "Limited liability partnership" means a partnership that has filed a statement of qualification under section 53-3-1001, Idaho Code, and does not have a similar statement in effect in any other jurisdiction.
- (8) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under section 53-3-202, Idaho Code, predecessor law, or comparable law of another jurisdiction.
- (9) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (10) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(11) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, limited liability company, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under section 53-3-303, Idaho Code, a statement of denial under section 53-3-304, Idaho Code, a statement of dissociation under section 53-3-704, Idaho Code, a statement of dissolution under section 53-3-805, Idaho Code, a statement of merger under section 53-3-907 or section 30-18-205, Idaho Code, a statement of qualification under section 53-3-1001, Idaho Code, a statement of foreign qualification or an amendment or cancellation of any of the foregoing.

(16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance. [I.C., § 53-3-101, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 116, § 9, p. 333; am. 2007, ch. 314, § 61, p. 887.]

STATUTORY NOTES

Acknowledgement. Following §§ 53-3-101 through 53-3-1205, the Uniform Partnership Act, appear the Comments drafted and copyrighted by the National Conference of Commissioners on Uniform State Laws. These Comments are reprinted with the permission of the National Conference of Commissioners on Uniform State Laws.

Amendments. — This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 116, inserted "or section 30-18-205" in subsection (15).

The 2007 amendment, by ch. 314, deleted "under section 53-3-1102, Idaho Code" following "foreign qualification" in subsection (15).

Compiler's notes. The words "this act" refer to S.L. 1998, ch. 65, which is the "Uniform Partnership Act," compiled as §§ 53-3-101 to 53-3-1205; except § 53-3-901A.

There are no corresponding official versions in the Uniform Act of §§ 53-3-105A, 53-3-107A, 53-3-1001A, 53-3-1001B, and 53-3-

1003A, Idaho Code. Idaho did not adopt sections 1204, 1205, and 1208 through 1211 of the Uniform Act, and sections 1206 and 1207 of the Uniform Act correspond to §§ 53-3-1204 and 53-3-1205, Idaho Code, respectively.

In some instances, the subsection designations in the Idaho version of a section of the Uniform Partnership Act are different than those of the official version, because subsections have been added to or omitted from the official version by S.L. 1998, ch. 65, including, subsections in the following sections: §§ 53-3-101, 53-3-105, 53-3-303, 53-3-603, 53-3-701, 53-3-801, 53-3-907 and 53-3-1003. These changes to the official version will not be reflected in the Official Comments drafted by the National Conference of Commissioners on Uniform State Laws.

Effective Dates. — This chapter, §§ 53-3-101 through 53-3-1205, is effective January 1, 2001, pursuant to S.L. 1998, ch. 65, § 3.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Association defined.
 Business trust.
 Contract.
 Evidence to establish partnership.
 Instructions.
 Intention generally.
 Intent of parties.
 Nature of partnership.
 Prior accord and satisfaction.
 Tenancy in common.

Association Defined.

Association differs from partnership in that it is not bound by acts of individual partners, but only by those of its managers; that shares in it are transferable; and that it is not dissolved by retirement, death, bankruptcy, etc., of its individual members. *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922).

Business Trust.

Business trust is regarded as partnership where shareholders are given substantial control of management of trust property, while one in which shareholders have no such control is regarded as ordinary trust. *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922).

Contract.

Partnership arises from express or implied contract. *Bussell v. Barry*, 61 Idaho 216, 102 P.2d 276 (1940).

Evidence to Establish Partnership.

It is an almost universal rule that general reputation or common report cannot be shown to establish a partnership relation, and the evidence in this case was held insufficient to establish a partnership. *Orofino Rochdale Co. v. Shore Lumber Co.*, 43 Idaho 425, 252 P. 487 (1927).

Instructions.

Instruction by court on essentials of partnership was sufficient where the instruction combined with other instructions sufficiently covered the question of partnership, especially where the appellant did not request further instructions on partnership. *Coffin v. Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

Intention Generally.

Property purchased with the design that it shall become partnership property, and actu-

ally used in accordance with that design, must be regarded as firm assets (rule applied to purchase of saw mill). *Gold Fork Lumber Co. v. Sweany & Smith Co.*, 35 Idaho 226, 205 P. 554 (1922).

Intent of Parties.

Evidence was insufficient to sustain finding that ranch was owned by partnership, so as to require an accounting of rents and profits of the ranch, in view of evidence that, while partners owned the ranch, each looked upon and treated his undivided half interest therein as his sole and separate property. *Bussell v. Barry*, 61 Idaho 216, 102 P.2d 276 (1940).

Nature of Partnership.

Partnership is, in effect, contract of mutual agency, each partner acting as principal in his own behalf and as agent for his copartner. *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922).

Prior Accord and Satisfaction.

Where finding that partners made full and complete settlement and accounting of all their dealings in 1931 was sustained by the evidence, any indebtedness owing to partner, who allegedly paid purchase-price, freight, and cost of handling of seed potatoes, purchased by partnership in 1928, was discharged and partner was not entitled in subsequent accounting proceeding to credit for such transactions. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Tenancy in Common.

Fact that ranch owners each owned an undivided half interest in the ranch and shared profits arising therefrom did not establish ownership of ranch as "partners." *Bussell v. Barry*, 61 Idaho 216, 102 P.2d 276 (1940).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 1 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 1-6.

A.L.R. — Modern status of the Massachu-

setts or business trust. 88 A.L.R.3d 704.

Excessiveness or adequacy of attorneys' fees in matters involving real estate - modern cases. 10 A.L.R.5th 448.

Excessiveness of inadequacy of attorneys' fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

OFFICIAL COMMENT

These Comments include the original Comments to the Revised Uniform Partnership Act (RUPA or the Act) and the new Comments to the Limited Liability Partnership Act Amendments to the Uniform Partnership Act (1994). The new Comments regarding limited liability partnerships are integrated into the RUPA Comments.

The RUPA continues the definition of "business" from Section 2 of the Uniform Partnership Act (UPA).

RUPA uses the more contemporary term "debtor in bankruptcy" instead of "bankrupt." The definition is adapted from the new Georgia Partnership Act, Ga. Code Ann. § 14-8-2(1). The definition does not distinguish between a debtor whose estate is being liquidated under Chapter 7 of the Bankruptcy Code and a debtor who is being rehabilitated under Chapter 11, 12, or 13 and includes both. The filing of a voluntary petition under Section 301 of the Bankruptcy Code constitutes an order for relief, but the debtor is entitled to notice and an opportunity to be heard before the entry of an order for relief in an involuntary case under Section 303 of the Code. The term also includes a debtor who is the subject of a comparable order under state or foreign law.

The definition of "distribution" is new and adds precision to the accounting rules established in Sections 401 and 807 and related sections. Transfers to a partner in the partner's capacity as a creditor, lessor, or employee of the partnership, for example, are not "distributions."

The definition of a "foreign limited liability partnership" includes a partnership formed under the laws of another State, foreign country, or other jurisdiction provided it has the status of a limited liability partnership in the other jurisdiction. Since the scope and nature of foreign limited liability partnership liability shields may vary in different jurisdictions, the definition avoids reference to similar or comparable laws. Rather, the definition incorporates the concept of a limited liability partnership in the foreign jurisdiction, however defined in that jurisdiction. The reference to formation "under laws other than the laws of this State" makes clear that the definition includes partnerships formed in foreign countries as well as in another State.

The definition of a "limited liability partnership" makes clear that a partnership may adopt the special liability shield characteris-

tics of a limited liability partnership simply by filing a statement of qualification under Section 1001. A partnership may file the statement in this State regardless of where formed. When coupled with the governing law provisions of Section 106(b), this definition simplifies the choice of law issues applicable to partnerships with multi-state activities and contacts. Once a statement of qualification is filed, a partnership's internal affairs and the liability of its partners are determined by the law of the State where the statement is filed. See Section 106(b). The partnership may not vary this particular requirement. See Section 103(b)(9).

The reference to a "partnership" in the definition of a limited liability partnership makes clear that the RUPA definition of the term rather than the UPA concept controls for purposes of a limited liability partnership. Section 101(6)[(8)] defines a "partnership" as "an association of two or more persons to carry on as co-owners a business for profit formed under Section 202, predecessor law, or comparable law of another jurisdiction." Section 202(b) further provides that "an association formed under a statute other than this [Act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [Act]." This language was intended to clarify that a limited partnership is not a RUPA general partnership. It was not intended to preclude the application of any RUPA general partnership rules to limited partnerships where limited partnership law otherwise adopts the RUPA rules. See Comments to Section 202(b) and Prefatory Note.

The effect of these definitions leaves the scope and applicability of RUPA to limited partnerships to limited partnership law, not to sever the linkage between the two Acts in all cases. Certain provisions of RUPA will continue to govern limited partnerships by virtue of Revised Uniform Limited Partnership Act (RULPA) Section 1105 which provides that "in any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern." The RUPA partnership definition includes partnerships formed under the UPA. Therefore, the limited liability partnership rules will govern limited partnerships "in any case not provided for" in RULPA. Since RULPA does not provide for any rules applicable to a limited partnership becoming a limited liability partnership, the limited liability partnership rules should ap-

ply to limited partnerships that file a statement of qualification.

Partner liability deserves special mention. RULPA Section 403(b) provides that a general partner of a limited partnership “has the liabilities of a partner in a partnership without limited partners.” Thus limited partnership law expressly references general partnership law for general partner liability and does not separately consider the liability of such partners. The liability of a general partner of a limited partnership that becomes a LLLP would therefore be the liability of a general partner in an LLP and would be governed by Section 306. The liability of a limited partner in a LLLP is a more complicated matter. RULPA Section 303(a) separately considers the liability of a limited partner. Unless also a general partner, a limited partner is not liable for the obligations of a limited partnership unless the partner participates in the control of the business and then only to persons reasonably believing the limited partner is a general partner. Therefore, arguably limited partners in a LLLP will have the specific RULPA Section 303(c) liability shield while general partners will have a superior Section 306(c) liability shield. In order to clarify limited partner liability and other linkage issues, States that have adopted RUPA, these limited liability partnership rules, and RULPA may wish to consider an amendment to RULPA. A suggested form of such an amendment is:

SECTION 1107. LIMITED LIABILITY LIMITED PARTNERSHIP.

(a) A limited partnership may become a limited liability partnership by:

(1) obtaining approval of the terms and conditions of the limited partnership becoming a limited liability limited partnership by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;

(2) filing a statement of qualification under Section 1001(c) of the Uniform Partnership Act (1994); and

(3) complying with the name requirements of Section 1002 of the Uniform Partnership Act (1994).

(b) A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under Section 1001(c) of the Uniform Partnership Act (1994).

(c) Sections 306(c) and 307(b) of the Uniform Partnership Act (1994) apply to both general and limited partners of a limited liability limited partnership.

“Partnership” is defined to mean an association of two or more persons to carry on as

co-owners a business for profit formed under Section 202 (or predecessor law or comparable law of another jurisdiction), that is, a general partnership. Thus, as used in RUPA, the term “partnership” does not encompass limited partnerships, contrary to the use of the term in the UPA. Section 901(3) defines “limited partnership” for the purpose of Article 9, which deals with conversions and mergers of general and limited partnerships.

The definition of “partnership agreement” is adapted from Section 101(9) of RULPA. The RUPA definition is intended to include the agreement among the partners, including amendments, concerning either the affairs of the partnership or the conduct of its business. It does not include other agreements between some or all of the partners, such as a lease or loan agreement. The partnership agreement need not be written; it may be oral or inferred from the conduct of the parties.

Any partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking is a “partnership at will.” The distinction between an “at-will” partnership and a partnership for “a definite term or the completion of a particular undertaking” is important in determining the rights of dissociating and continuing partners following the dissociation of a partner. See Sections 601, 602, 701(b), 801(a), 802(b), and 803.

It is sometimes difficult to determine whether a partnership is at will or is for a definite term or the completion of a particular undertaking. Presumptively, every partnership is an at-will partnership. *See, e.g., Stone v. Stone*, 292 So. 2d 686 (La. 1974); *Frey v. Hauke*, 171 Neb. 852, 108 N.W.2d 228 (1961). To constitute a partnership for a term or a particular undertaking, the partners must agree (i) that the partnership will continue for a definite term or until a particular undertaking is completed and (ii) that they will remain partners until the expiration of the term or the completion of the undertaking. Both are necessary for a term partnership; if the partners have the unrestricted right, as distinguished from the power, to withdraw from a partnership formed for a term or particular undertaking, the partnership is one at will, rather than a term partnership.

To find that the partnership is formed for a definite term or a particular undertaking, there must be clear evidence of an agreement among the partners that the partnership (i) has a minimum or maximum duration or (ii) terminates at the conclusion of a particular venture whose time is indefinite but certain to occur. *See, e.g., Stainton v. Tarantino*, 637 F. Supp. 1051 (E.D. Pa. 1986) (partnership to dissolve no later than December 30, 2020); *Abel v. American Art Analog, Inc.*, 838 F.2d 691 (3d Cir. 1988) (partnership purpose to

market an art book); *68th Street Apts., Inc. v. Lauricella*, 362 A.2d 78 (N.J. Super. Ct. 1976) (partnership purpose to construct an apartment building). A partnership to conduct a business which may last indefinitely, however, is an at-will partnership, even though there may be an obligation of the partnership, such as a mortgage, which must be repaid by a certain date, absent a specific agreement that no partner can rightfully withdraw until the obligation is repaid. *See, e.g., Page v. Page*, 55 Cal. 2d 192, 359 P.2d 41 (1961) (partnership purpose to operate a linen supply business); *Frey v. Hauke*, *supra* (partnership purpose to contract and operate a bowling alley); *Girard Bank v. Haley*, 460 Pa. 237, 332 A.2d 443 (1975) (partnership purpose to maintain and lease buildings).

"Partnership interest" or "partner's interest in the partnership" is defined to mean all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights. A partner's "transferable interest" is a more limited concept and means only his share of the profits and losses and right to receive distributions, that is, the partner's economic interests. *See* Section 502 and Comment. Compare RULPA § 101(10) ("partnership interest" includes partner's economic interests only).

The definition of "person" is the usual definition used by the National Conference of Commissioners on Uniform State Laws (NCCUSL or the Conference). The definition includes other legal or commercial entities such as limited liability companies.

"Property" is defined broadly to include all types of property, as well as any interest in property.

The definition of "State" is the Conference's usual definition.

The definition of "statement" is new and refers to one of the various statements authorized by RUPA to enhance or limit the agency authority of a partner, to deny the authority or status of a partner, or to give notice of certain events, such as the dissociation of a partner or the dissolution of the partnership. *See* Sections 303, 304, 704, 805, and 907. Generally, Section 105 governs the execution, filing, and recording of all statements. The definition also makes clear that a statement of qualification under Section 1001 and a statement of foreign qualification under Section 1102 are considered statements. Both qualification statements are therefore subject to the execution, filing, and recordation rules of Section 105.

"Transfer" is defined broadly to include all manner of conveyances, including leases and encumbrances.

53-3-102. Knowledge and notice. — (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

- (1) Knows of it;
- (2) Has received a notification of it; or
- (3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows of it.

(d) A person receives a notification when:

- (1) The person knows of the notification; or
- (2) The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not

require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. [I.C., § 53-3-102, as added by 1998, ch. 65, § 2, p. 226.]

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 209, 210, 213, 331, 434 et seq., 513.

C.J.S. — 68 C.J.S., Partnership, §§ 139, 140.

OFFICIAL COMMENT

The concepts and definitions of "knowledge," "notice," and "notification" draw heavily on Section 1-201(25) to (27) [see § 28-1-202] of the Uniform Commercial Code (UCC). The UCC text has been altered somewhat to improve clarity and style, but in general no substantive changes are intended from the UCC concepts. "A notification" replaces the UCC's redundant phrase, "a notice or notification," throughout the Act.

A person "knows" a fact only if that person has actual knowledge of it. Knowledge is cognitive awareness. That is solely an issue of fact. This is a change from the UPA Section 3(1) definition of "knowledge" which included the concept of "bad faith" knowledge arising from other known facts.

"Notice" is a lesser degree of awareness than "knows" and is based on a person's: (i) actual knowledge; (ii) receipt of a notification; or (iii) reason to know based on actual knowledge of other facts and the circumstances at the time. The latter is the traditional concept of inquiry notice.

Generally, under RUPA, statements filed pursuant to Section 105 do not constitute constructive knowledge or notice, except as expressly provided in the Act. See Section 301(1) (generally requiring knowledge of limitations on partner's apparent authority). Properly recorded statements of limitation on a partner's authority, on the other hand, generally constitute constructive knowledge with respect to the transfer of real property held in the partnership name. See Sections 303(d)(1), 303(e), 704(b), and 805(b). The other exceptions are Sections 704(c) (statement of dissociation effective 90 days after filing) and 805(c) (statement of dissolution effective 90 days after filing).

A person "receives" a notification when (i) the notification is delivered to the person's place of business (or other place for receiving

communications) or (ii) the recipient otherwise actually learns of its existence.

The sender "notifies" or gives a notification by making an effort to inform the recipient, which is reasonably calculated to do so in ordinary course, even if the recipient does not actually learn of it.

The Official Comment to UCC Section 1-201(26) [see § 28-1-202], on which this subsection is based, explains that "notifies" is the word used when the essential fact is the proper dispatch of the notice, not its receipt. When the essential fact is the other party's receipt of the notice, that is stated.

A notification is not required to be in writing. That is a change from UPA Section 3(2)(b). As under the UCC, the time and circumstances under which a notification may cease to be effective are not determined by RUPA.

Subsection (e) determines when an agent's knowledge or notice is imputed to an organization, such as a corporation. In general, only the knowledge or notice of the agent conducting the particular transaction is imputed to the organization. Organizations are expected to maintain reasonable internal routines to insure that important information reaches the individual agent handling a transaction. If, in the exercise of reasonable diligence on the part of the organization, the agent should have known or had notice of a fact, or received a notification of it, the organization is bound. The Official Comment to UCC Section 1-201(27) explains:

This makes clear that reason to know, knowledge, or a notification, although "received" for instance by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

Subsection (e) uses the phrase “person other than an individual” in lieu of the UCC term “organization.”

Subsection (f) continues the rule in UPA Section 12 that a partner’s knowledge or notice of a fact relating to the partnership is imputed to the partnership, except in the case

of fraud on the partnership. Limited partners, however, are not “partners” within the meaning of RUPA. See Comment 4 to Section 202. It is anticipated that RULPA will address the issue of whether notice to a limited partner is imputed to a limited partnership.

53-3-103. Effect of partnership agreement — Nonwaivable provisions. — (a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

- (1) Vary the rights and duties under section 53-3-105, Idaho Code, except to eliminate the duty to provide copies of statements to all of the partners;
- (2) Unreasonably restrict the right of access to books and records under section 53-3-403(b), Idaho Code, or the right to be furnished with information under section 53-3-403(c), Idaho Code;
- (3) Eliminate the duty of loyalty under section 53-3-404(b) or section 53-3-603(c), Idaho Code, but if not manifestly unreasonable:

- (i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty; or
- (ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

- (4) Unreasonably reduce the duty of care under section 53-3-404(c) or section 53-3-603(c), Idaho Code;
- (5) Eliminate the obligation of good faith and fair dealing under section 53-3-404(d), Idaho Code, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (6) Vary the power to dissociate as a partner under section 53-3-602(a), Idaho Code, except to require the notice under section 53-3-601(1), Idaho Code, to be in writing;
- (7) Vary the right of a court to expel a partner in the events specified in section 53-3-601(5), Idaho Code;
- (8) Vary the requirement to wind up the partnership business in cases specified in section 53-3-801(4), (5) or (6), Idaho Code;
- (9) Vary the law applicable to a limited liability partnership under section 53-3-106(b), Idaho Code; or
- (10) Restrict rights of third parties under this act. [I.C., § 53-3-103, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act”, see Compiler’s Notes, § 53-101.

OFFICIAL COMMENT

1. The general rule under Section 103(a) is that relations among the partners and between the partners and the partnership are governed by the partnership agreement. See Section 101(5)[(9)]. To the extent that the partners fail to agree upon a contrary rule, RUPA provides the default rule. Only the rights and duties listed in Section 103(b), and implicitly the corresponding liabilities and remedies under Section 405, are mandatory and cannot be waived or varied by agreement beyond what is authorized. Those are the only exceptions to the general principle that the provisions of RUPA with respect to the rights of the partners inter se are merely default rules, subject to modification by the partners. All modifications must also, of course, satisfy the general standards of contract validity. See Section 104.

2. Under subsection (b)(1), the partnership agreement may not vary the requirements for executing, filing, and recording statements under Section 105, except the duty to provide copies to all the partners. A statement that is not executed, filed, and recorded in accordance with the statutory requirements will not be accorded the effect prescribed in the Act, except as provided in Section 303(d).

3. Subsection (b)(2) provides that the partnership agreement may not unreasonably restrict a partner or former partner's access rights to books and records under Section 403(b). It is left to the courts to determine what restrictions are reasonable. See Comment 2 to Section 403. Other information rights in Section 403 can be varied or even eliminated by agreement.

4. Subsection (b)(3) through (5) are intended to ensure a fundamental core of fiduciary responsibility. Neither the fiduciary duties of loyalty or care, nor the obligation of good faith and fair dealing, may be eliminated entirely. However, the statutory requirements of each can be modified by agreement, subject to the limitation stated in subsection (b)(3) through (5).

There has always been a tension regarding the extent to which a partner's fiduciary duty of loyalty can be varied by agreement, as contrasted with the other partners' consent to a particular and known breach of duty. On the one hand, courts have been loathe to enforce agreements broadly "waiving" in advance a partner's fiduciary duty of loyalty, especially where there is unequal bargaining power, information, or sophistication. For this reason, a very broad provision in a partnership agreement in effect negating any duty of loyalty, such as a provision giving a managing partner complete discretion to manage the business with no liability except for acts and omissions that constitute willful misconduct,

will not likely be enforced. *See, e.g., Labovitz v. Dolan*, 189 Ill. App. 3d 403, 136 Ill. Dec. 780, 545 N.E.2d 304 (1989). On the other hand, it is clear that the remaining partners can "consent" to a particular conflicting interest transaction or other breach of duty, after the fact, provided there is full disclosure.

RUPA attempts to provide a standard that partners can rely upon in drafting exculpatory agreements. It is not necessary that the agreement be restricted to a particular transaction. That would require bargaining over every transaction or opportunity, which would be excessively burdensome. The agreement may be drafted in terms of types or categories of activities or transactions, but it should be reasonably specific.

A provision in a real estate partnership agreement authorizing a partner who is a real estate agent to retain commissions on partnership property bought and sold by that partner would be an example of a "type or category" of activity that is not manifestly unreasonable and thus should be enforceable under the Act. Likewise, a provision authorizing that partner to buy or sell real property for his own account without prior disclosure to the other partners or without first offering it to the partnership would be enforceable as a valid category of partnership activity.

Ultimately, the courts must decide the outer limits of validity of such agreements, and context may be significant. It is intended that the risk of judicial refusal to enforce manifestly unreasonable exculpatory clauses will discourage sharp practices while accommodating the legitimate needs of the parties in structuring their relationship.

5. Subsection (b)(3)(i) permits the partners, in their partnership agreement, to identify specific types or categories of partnership activities that do not violate the duty of loyalty. A modification of the statutory standard must not, however, be manifestly unreasonable. This is intended to discourage overreaching by a partner with superior bargaining power since the courts may refuse to enforce an overly broad exculpatory clause. *See, e.g., Vlases v. Montgomery Ward & Co.*, 377 F.2d 846, 850 (3d Cir. 1967) (limitation prohibits unconscionable agreements); *PPG Industries, Inc. v. Shell Oil Co.*, 919 F.2d 17, 19 (5th Cir. 1990) (apply limitation deferentially to agreements of sophisticated parties).

Subsection (b)(3)(ii) is intended to clarify the right of partners, recognized under general law, to consent to a known past or anticipated violation of duty and to waive their legal remedies for redress of that violation. This is intended to cover situations where the conduct in question is not specifically authorized by the partnership agreement. It can

also be used to validate conduct that might otherwise not satisfy the “manifestly unreasonable” standard. Clause (ii) provides that, after full disclosure of all material facts regarding a specific act or transaction that otherwise would violate the duty of loyalty, it may be authorized or ratified by the partners. That authorization or ratification must be unanimous unless a lesser number or percentage is specified for this purpose in the partnership agreement.

6. Under subsection (b)(4), the partners’ duty of care may not be unreasonably reduced below the statutory standard set forth in Section 404(d), that is, to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

For example, partnership agreements frequently contain provisions releasing a partner from liability for actions taken in good faith and in the honest belief that the actions are in the best interests of the partnership and indemnifying the partner against any liability incurred in connection with the business of the partnership if the partner acts in a good faith belief that he has authority to act. Many partnership agreements reach this same result by listing various activities and stating that the performance of these activities is deemed not to constitute gross negligence or willful misconduct. These types of provisions are intended to come within the modifications authorized by subsection (b)(4). On the other hand, absolving partners of intentional misconduct is probably unreasonable. As with contractual standards of loyalty, determining the outer limit in reducing the standard of care is left to the courts.

The standard may, of course, be increased by agreement to one of ordinary care or an even higher standard of care.

7. Subsection (b)(5) authorizes the partners to determine the standards by which the performance of the obligation of good faith and fair dealing is to be measured. The language of subsection (b)(5) is based on UCC Section 1-102(3). The partners can negotiate and draft specific contract provisions tailored to their particular needs (e.g., five days notice of a partners’ meeting is adequate notice), but blanket waivers of the obligation are unenforceable. *See, e.g., PPG Indus., Inc. v. Shell Oil Co.*, 919 F.2d 17 (5th Cir. 1990); *First Security Bank v. Mountain View Equip. Co.*, 112 Idaho 158, 730 P.2d 1078 (Ct. App. 1986), *aff’d*, 112 Idaho 1078, 739 P.2d 377 (1987); *American Bank of Commerce v. Covolo*, 88 N.M. 405, 540 P.2d 1294 (1975).

8. Section 602(a) continues the traditional UPA Section 31(2) rule that every partner has the power to withdraw from the partnership at any time, which power can not be bargained away. Section 103(b)(6) provides that

the partnership agreement may not vary the power to dissociate as a partner under Section 602(a), except to require that the notice of withdrawal under Section 601(1) be in writing. The UPA was silent with respect to requiring a written notice of withdrawal.

9. Under subsection (b)(7), the right of a partner to seek court expulsion of another partner under Section 601(5) can not be waived or varied (e.g., requiring a 90-day notice) by agreement. Section 601(5) refers to judicial expulsion on such grounds as misconduct, breach of duty, or impracticability.

10. Under subsection (b)(8), the partnership agreement may not vary the right of partners to have the partnership dissolved and its business wound up under Section 801(4), (5), or (6). Section 801(4) provides that the partnership must be wound up if its business is unlawful. Section 801(5) provides for judicial winding up in such circumstances as frustration of the firm’s economic purpose, partner misconduct, or impracticability. Section 801(6) accords standing to transferees of an interest in the partnership to seek judicial dissolution of the partnership in specified circumstances.

11. Subsection (b)(9) makes clear that a limited liability partnership may not designate the law of a State other than the State where it filed its statement of qualification to govern its internal affairs and the liability of its partners. *See* Sections 101(5)([7]), 106(b), and 202(a). Therefore, the selection of a State within which to file a statement of qualification has important choice of law ramifications, particularly where the partnership was formed in another State. *See* Comments to Section 106(b).

12. Although stating the obvious, subsection (b)(10) provides expressly that the rights of a third party under the Act may not be restricted by an agreement among the partners to which the third party has not agreed. A non-partner who is a party to an agreement among the partners is, of course, bound. *Cf.* Section 703(c) (creditor joins release).

13. The Article 9 rules regarding conversions and mergers are not listed in Section 103(b) as mandatory. Indeed, Section 907 states expressly that partnerships may be converted and merged in any other manner provided by law. The effect of compliance with Article 9 is to provide a “safe harbor” assuring the legal validity of such conversions and mergers. Although not immune from variation in the partnership agreement, noncompliance with the requirements of Article 9 in effecting a conversion or merger is to deny that “safe harbor” validity to the transaction. In this regard, Sections 903(b) and 905(c)(2) require that the conversion or merger of a limited partnership be approved by all of the partners, notwithstanding a contrary provi-

sion in the limited partnership agreement. Thus, in effect, the agreement can not vary the voting requirement without sacrificing the benefits of the "safe harbor."

53-3-104. Supplemental principles of law. — (a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

(b) If an obligation to pay interest arises under this act and the rate is not specified, the rate is that specified in subsection (1) of section 28-22-104, Idaho Code. [I.C., § 53-3-104, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-3-101.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Use of Partnership Property During Winding-Up.

Where it was impossible to account for the partnership's profits during a prolonged period of winding-up, the trial court did not err

in charging the surviving partners rent and interest for their use of partnership property during the winding-up period. *Murgoitio v. Murgoitio*, 111 Idaho 573, 726 P.2d 685 (1986).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 773 et seq.

OFFICIAL COMMENT

The principles of law and equity supplement RUPA unless displaced by a particular provision of the Act. This broad statement combines the separate rules contained in UPA Sections 4(2), 4(3), and 5. These supplementary principles encompass not only the law of agency and estoppel and the law merchant mentioned in the UPA, but all of the other principles listed in UCC Section 1-103: the law relative to capacity to contract, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other common law validating or invalidating causes, such as unconscionability. No substantive change from either the UPA or the UCC is intended.

It was thought unnecessary to repeat the

UPA Section 4(1) admonition that statutes in derogation of the common law are not to be strictly construed. This principle is now so well established that it is not necessary to so state in the Act. No change in the law is intended. See the Comment to RUPA Section 1101.

Subsection (b) is new. It is based on the definition of "interest" in Section 14-8-2(5) of the Georgia act and establishes the applicable rate of interest in the absence of an agreement among the partners. Adopting States can select the State's legal rate of interest or other statutory interest rate, such as the rate for judgments.

53-3-105. Execution and filing of statements. — (a) A statement may be filed in the office of the secretary of state. A filed statement has the effect provided in this act with respect to partnership property located in or transactions that occur in this state.

(b) A statement filed by a partnership must be executed by at least two (2) partners. Other statements must be executed by a partner or other person authorized by this act. An individual who executes a statement as, or on

behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(c) A person authorized by this act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(d) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner. [I.C., § 53-3-105, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 53-3-101.

OFFICIAL COMMENT

1. Section 105 is new. It mandates the procedural rules for the execution, filing, and recording of the various “statements” (see Section 101(11)) authorized by RUPA. Section 101(13)(15) makes clear that a statement of qualification filed by a partnership to become a limited liability partnership is included in the definition of a statement. Therefore, the execution, filing, and recording rules of this section must be followed except that the decision to file the statement of qualification must be approved by the vote of the partners necessary to amend the partnership agreement as to contribution requirements. See Section 1001(b) and Comments.

No filings are mandatory under RUPA. In all cases, the filing of a statement is optional and voluntary. A system of mandatory filing and disclosure for partnerships, similar to that required for corporations and limited partnerships, was rejected for several reasons. First, RUPA is designed to accommodate the needs of small partnerships, which often have unwritten or sketchy agreements and limited resources. Furthermore, inadvertent partnerships are also governed by the Act, as the default form of business organization, in which case filing would be unlikely.

The RUPA filing provisions are, however, likely to encourage the voluntary use of partnership statements. There are a number of strong incentives for the partnership or the partners to file statements or for third parties, such as lenders or transferees of partnership property, to compel them to do so.

Only statements that are executed, filed, and, if appropriate (such as the authority to

transfer real property), recorded in conformity with Section 105 have the legal consequences accorded statements by RUPA. The requirements of Section 105 cannot be varied in the partnership agreement, except the duty to provide copies of statements to all the partners. See Section 103(b)(1).

In most States today, the filing and recording of statements requires written documents. As technology advances, alternatives suitable for filing and recording may be developed. RUPA itself does not impose any requirement that statements be in writing. It is intended that the form or medium for filing and recording be left to the general law of adopting States.

2. Section 105(a) provides for a single, central filing of all statements, as is the case with corporations, limited partnerships, and limited liability companies. The expectation is that most States will assign to the Secretary of State the responsibility of maintaining the filing system for partnership statements. Since a partnership is an entity under RUPA, all statements should be indexed by partnership name, not by the names of the individual partners.

Partnerships transacting business in more than one State will want to file copies of statements in each State because subsection (a) limits the legal effect of filed statements to property located or transactions occurring within the State. The filing of a certified copy of a statement originally filed in another State is permitted, and indeed encouraged, in order to avoid inconsistencies between statements filed in different States.

3. Subsection (b), in effect, mandates the use of certified copies of filed statements for local recording in the real estate records by limiting the legal effect of recorded statements under the Act to those copies. The reason for recording only certified copies of filed statements is to eliminate the possibility of inconsistencies affecting the title to real property.

Subsection (c) requires that statements filed on behalf of a partnership, that is, the entity, be executed by at least two partners. Individual partners and other persons authorized by the Act to file a statement may execute it on their own behalf. To protect the partners and the partnership from unauthorized or improper filings, an individual who executes a statement as a partner must personally declare under penalty of perjury that the statement is accurate.

The amendment or cancellation of statements are authorized by subsection (d).

As a further safeguard against inaccurate or unauthorized filings, subsection (e) requires that a copy of every statement filed be

sent to each partner, although the failure to do so does not limit the effectiveness of the statement. This requirement may, however, be eliminated in the partnership agreement. See Section 103(b)(1). Partners may also file a statement of denial under Section 304.

4. A filed statement may be amended or canceled by any person authorized by the Act to file an original statement. The amendment or cancellation must state the name of the partnership so that it can be properly indexed and found, identify the statement being amended or canceled, and the substance of the amendment or cancellation. An amendment generally has the same operative effect as an original statement. A cancellation of extraordinary authority terminates that authority. A cancellation of a limitation on authority revives a previous grant of authority. See Section 303(d). The subsequent filing of a statement similar in kind to a statement already of record is treated as an amendment, even if not so denominated. Any substantive conflict between filed statements operates as a cancellation of authority under Section 303.

53-3-105A. Fees. — The secretary of state shall collect the following fees for the services described:

(a) Filing a statement of partnership authority, a statement of qualification as a limited liability partnership, or a combined statement of partnership authority and qualification as a limited liability partnership..... \$100.00

(b) Filing a statement of qualification of a foreign limited liability partnership..... \$100.00

(c) Filing a statement of amendment, cancellation, limitation of authority, cancellation of a limitation of authority, denial, dissociation, dissolution, conversion or merger; filing a statement of partnership authority by a limited liability partnership; filing a statement of qualification as a limited liability partnership by a partnership which has previously filed a statement of partnership authority; or filing a statement not otherwise specified herein..... \$30.00

(d) Filing an application for reinstatement following revocation of the statement of qualification of a domestic or foreign limited liability partnership..... \$30.00

(e) Filing an annual report of a domestic or foreign limited liability partnership, a statement of resignation of registered agent or a change of registered agent's name or address..... No fee

(f) Issuing a certificate of existence, authorization or other fact .. \$10.00

(g) Filing of any document when the filing party requires evidence of filing to be returned within eight (8) working hours, a surcharge of..... \$20.00

(h) Any nontyped document or any document not on a standard form prescribed by the secretary of state, a surcharge of..... \$20.00

[I.C., § 53-3-105A, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — There is no corresponding official version of this section in the Uniform Act.

53-3-106. Governing law. — (a) Except as otherwise provided in subsection (b) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership. [I.C., § 53-3-106, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

The subsection (a) internal relations rule is new. Cf. RULPA § 901 (internal affairs governed by law of State in which limited partnership organized).

RUPA looks to the jurisdiction in which a partnership's chief executive office is located to provide the law governing the internal relations among the partners and between the partners and the partnership. The concept of the partnership's "chief executive office" is drawn from UCC Section 9-103(3)(d). It was chosen in lieu of the State of organization because no filing is necessary to form a general partnership, and thus the situs of its organization is not always clear, unlike a limited partnership, which is organized in the State where its certificate is filed.

The term "chief executive office" is not defined in the Act, nor is it defined in the UCC. Paragraph 5 of the Official Comment to UCC Section 9-103(3)(d) explains:

"Chief executive office" means the place from which in fact the debtor manages the main part of his business operations Doubt may arise as to which is the "chief executive office" of a multi-state enterprise, but it would be rare that there could be more than two possibilities [The rule] will be simple to apply in most cases

In the absence of any other clear rule for determining a partnership's legal situs, it seems convenient to use that rule for choice of law purposes as well.

The choice-of-law rule provided by subsection (a) is only a default rule, and the partners may by agreement select the law of another State to govern their internal affairs, subject to generally applicable conflict of laws requirements. For example, where the partners may not resolve a particular issue by an explicit provision of the partnership agreement, such as the rights and duties set forth in Section 103(b), the law chosen will not be

applied if the partners or the partnership have no substantial relationship to the chosen State or other reasonable basis for their choice or if application of the law of the chosen State would be contrary to a fundamental policy of a State that has a materially greater interest than the chosen State. See Restatement (Second) of Conflict of Laws § 187(2) (1971). The partners must, however, select only one State to govern their internal relations. They cannot select one State for some aspects of their internal relations and another State for others.

Contrasted with the variable choice-of-law rule provided by subsection (a), the law of the State where a limited liability partnership files its statement of qualification applies to such a partnership and may not be varied by the agreement of the partners. See Section 103(b)(9). Also, a partnership that files a statement of qualification in another State is not defined as a limited liability partnership in this State. See Section 101(5)(7)]. Unlike a general partnership which may be formed without any filing, a partnership may only become a limited liability partnership by filing a statement of qualification. Therefore, the situs of its organization is clear. Because it is often unclear where a general partnership is actually formed, the decision to file a statement of qualification in a particular State constitutes a choice-of-law for the partnership which cannot be altered by the partnership agreement. See Comments to Section 103(b)(9). If the partnership agreement of an existing partnership specifies the law of a particular State as its governing law, and the partnership thereafter files a statement of qualification in another State, the partnership agreement choice is no longer controlling. In such cases, the filing of a statement of qualification "amends" the partnership agreement on this limited matter. Accordingly, if a

statement of qualification is revoked or canceled for a limited liability partnership, the law of the State of filing would continue to

apply unless the partnership agreement thereafter altered the applicable law rule.

53-3-107. Partnership subject to amendment or repeal of act. — A partnership governed by this act is subject to any amendment to or repeal of this act. [I.C., § 53-3-107, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

The reservation of power provision is new. It is adapted from Section 1.02 of the Revised Model Business Corporation Act (RMBCA) and Section 1106 of RULPA.

As explained in the Official Comment to the RMBCA, the genesis of those provisions is *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibits the application of newly enacted statutes to exist-

ing corporations, while suggesting the efficacy of a reservation of power provision. Its purpose is to avoid any possible argument that a legal entity created pursuant to statute or its members have a contractual or vested right in any specific statutory provision and to ensure that the State may in the future modify its enabling statute as it deems appropriate and require existing entities to comply with the statutes as modified.

PART 2. NATURE OF PARTNERSHIP

53-3-201. Partnership as entity. — (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 53-3-1001, Idaho Code. [I.C., § 53-3-201, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

Dissociation from Joint Venture.

Partner could not be dissociated from the joint venture and have it continue in business; that portion of the Revised Uniform Partnership Act providing for the continua-

tion of a partnership as a separate legal entity after dissociation of a partner had no application to a joint venture. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

OFFICIAL COMMENT

RUPA embraces the entity theory of the partnership. In light of the UPA's ambivalence on the nature of partnerships, the explicit statement provided by subsection (a) is deemed appropriate as an expression of the increased emphasis on the entity theory as the dominant model. But see Section 306 (partners' liability joint and several unless the partnership has filed a statement of qualification to become a limited liability partnership).

Giving clear expression to the entity nature of a partnership is intended to allay previous concerns stemming from the aggregate theory, such as the necessity of a deed to convey title from the "old" partnership to the "new" partnership every time there is a change of cast among the partners. Under RUPA, there

is no "new" partnership just because of membership changes. That will avoid the result in cases such as *Fairway Development Co. v. Title Insurance Co.*, 621 F. Supp. 120 (N.D. Ohio 1985), which held that the "new" partnership resulting from a partner's death did not have standing to enforce a title insurance policy issued to the "old" partnership.

Subsection (b) makes clear that the explicit entity theory provided by subsection (a) applies to a partnership both before and after it files a statement of qualification to become a limited liability partnership. Thus, just as there is no "new" partnership resulting from membership changes, the filing of a statement of qualification does not create a "new" partnership. The filing partnership continues to be the same partnership entity that existed

before the filing. Similarly, the amendment or cancellation of a statement of qualification under Section 105(d) or the revocation of a statement of qualification under Section 1003(c) does not terminate the partnership

and create a "new" partnership. See Section 1003(d). Accordingly, a partnership remains the same entity regardless of a filing, cancellation, or revocation of a statement of qualification.

53-3-202. Formation of partnership. — (a) Except as otherwise provided in subsection (b) of this section, the association of two (2) or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this act.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise. [I.C., § 53-3-202, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-3-101.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Contracts of sale.

Corporate relation.

Declarations as evidence.

Intent of parties.
 Partnership not created.
 Profits and losses generally.
 Property in individual name.
 Ranch partnership.
 Tenancy in common.

Contracts of Sale.

The point that the contract was one of partnership was without merit. It was properly construed to be a contract for the sale and repurchase of cattle. *Valley Meat Co. v. Stanger*, 47 Idaho 692, 280 P. 678 (1929).

Corporate Relation.

Whether, after partnership was converted into two corporations in which partners retained the same respective interests, the partnership relation continued so as to impose on majority stockholder and manager the duty of a fiduciary as to disclosures and entitle minority stockholder to rescind sale of his stock to majority stockholder for failure of the latter to disclose the true value of stock was an issue of fact. *Anderson v. Lloyd*, 64 Idaho 768, 139 P.2d 244 (1943).

Declarations as Evidence.

The declarations of a partner are not admissible against his copartners as evidence of the partnership. *Boise Payette Lumber Co. v. Sarret*, 38 Idaho 278, 221 P. 130 (1923).

Intent of Parties.

A mere agreement to share in profits constitutes, as of itself, neither a "partnership" nor a "joint adventure," and in order to constitute one of these relationships there must be other facts showing that the relationship was the intention of the parties, or such as to estop a denial of the relationship as against third parties. *Moon v. Ervin*, 64 Idaho 464, 133 P.2d 933 (1943).

Partnership Not Created.

Testimony that an alleged partner had given orders not to charge any more to the partnership and that charges were made to him personally thereafter is of no value on the issue as to whether that person held himself out to be a partner. *Orofino Rochdale Co. v. Shore Lumber Co.*, 43 Idaho 425, 252 P. 487 (1927).

Profits and Losses Generally.

A mere agreement to share in the profits, of itself, constitutes neither partnership nor a

joint adventure; hence, an agreement whereby the vendors of an irrigation project are, in addition to the purchase price, to share in the net profits, does not establish a partnership with the purchasers thereof. *Palmer v. Maney*, 45 Idaho 731, 266 P. 424 (1928).

Where there has been a division of profits of a partnership, and such division of profits conformed to the written partnership agreement, there is a presumption that not only is there a valid partnership, but also the distribution of profits was made in accordance with the written terms of the agreement. *Kraiter v. Jerome*, 79 Idaho 148, 312 P.2d 1034 (1957).

Property in Individual Name.

Evidence that lease running to named partners doing business under designated partnership name was negotiated by co-partnership, and that expenses incident thereto were paid with partnership funds, and that profit therefrom was partnership profit, established that lease was held as partnership property rather than tenancy in common, notwithstanding that lease was signed by partners individually without use of partnership name. *Bratton v. Morris*, 54 Idaho 743, 37 P.2d 1097 (1934).

Ranch Partnership.

Evidence in the cited case was insufficient to sustain a finding that a ranch was owned by a partnership, so as to require an accounting of rents and profits of the ranch, in view of the evidence that, while the partners owned the ranch, each looked upon his individual one-half interest therein as his sole and separate property. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Tenancy in Common.

The fact that ranch owners each owned an undivided one-half interest in the ranch and shared profits arising therefrom did not establish ownership of such ranch as partners. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

RESEARCH REFERENCES

C.J.S. — 68 C.J.S., Partnership, § 8-40.
A.L.R. — Construction of agreement be-

tween real estate agents to share commissions. 71 A.L.R.3d 586.

OFFICIAL COMMENT

1. Section 202 combines UPA Sections 6 and 7. The traditional UPA Section 6(1) “definition” of a partnership is recast as an operative rule of law. No substantive change in the law is intended. The UPA “definition” has always been understood as an operative rule, as well as a definition. The addition of the phrase, “whether or not the persons intend to form a partnership,” merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be “partners.” Indeed, they may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility.

As under the UPA, the attribute of co-ownership distinguishes a partnership from a mere agency relationship. A business is a series of acts directed toward an end. Ownership involves the power of ultimate control. To state that partners are co-owners of a business is to state that they each have the power of ultimate control. See Official Comment to UPA § 6(1). On the other hand, as subsection (c)(1) makes clear, passive co-ownership of property by itself, as distinguished from the carrying on of a business, does not establish a partnership.

2. Subsection (b) provides that business associations organized under other statutes are not partnerships. Those statutory associations include corporations, limited partnerships, and limited liability companies. That continues the UPA concept that general partnership is the residual form of for profit business association, existing only if another form does not.

A limited partnership is not a partnership under this definition. Nevertheless, certain provisions of RUPA will continue to govern limited partnerships because RULPA itself, in Section 1105, so requires “in any case not provided for” in RULPA. For example, the rules applicable to a limited liability partnership will generally apply to limited partnerships. See Comment to Section 101(5) [(7)] (definition of a limited liability partnership). In light of that RULPA Section 1105, UPA Section 6(2), which provides that limited partnerships are governed by the UPA, is redundant and has not been carried over to RUPA. It is also more appropriate that the applicability of RUPA to limited partnerships be governed exclusively by RULPA. For example, a RULPA amendment may clarify certain linkage questions regarding the application of the limited liability partnership rules to limited partnerships. See Comment to Section

101(5) [(7)] for a suggested form of such an amendment.

It is not intended that RUPA change any common law rules concerning special types of associations, such as mining partnerships, which in some jurisdictions are not governed by the UPA.

Relationships that are called “joint ventures” are partnerships if they otherwise fit the definition of a partnership. An association is not classified as a partnership, however, simply because it is called a “joint venture.”

An unincorporated nonprofit organization is not a partnership under RUPA, even if it qualifies as a business, because it is not a “for profit” organization.

3. Subsection (c) provides three rules of construction that apply in determining whether a partnership has been formed under subsection (a). They are largely derived from UPA Section 7, and to that extent no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as *prima facie* evidence thereof. The protected categories, in which receipt of a share of the profits is not presumed to create a partnership, apply whether the profit share is a single flat percentage or a ratio which varies, for example, after reaching a dollar floor or different levels of profits.

Like its predecessor, RUPA makes no attempt to answer in every case whether a partnership is formed. Whether a relationship is more properly characterized as that of borrower and lender, employer and employee, or landlord and tenant is left to the trier of fact. As under the UPA, a person may function in both partner and nonpartner capacities.

Paragraph (3)(v) adds a new protected category to the list. It shields from the presumption a share of the profits received in payment of interest or other charges on a loan, “including a direct or indirect present or future ownership in the collateral, or rights to income, proceeds, or increase in value derived from the collateral.” The quoted language is taken from Section 211 of the Uniform Land Security Interest Act. The purpose of the new language is to protect shared-appreciation mortgages, contingent or other variable or performance-related mortgages, and other equity participation arrangements by clarifying that contingent payments do not presumptively convert lending arrangements into partnerships.

4. Section 202(e) of the 1993 Act stated that partnerships formed under RUPA are general partnerships and that the partners are general partners. That section has been deleted as unnecessary. Limited partners are

not “partners” within the meaning of RUPA, however.

53-3-203. Partnership property. — Property acquired by a partnership is property of the partnership and not of the partners individually. [I.C., § 53-3-203, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

All property acquired by a partnership, by transfer or otherwise, becomes partnership property and belongs to the partnership as an entity, rather than to the individual partners. This expresses the substantive result of UPA Sections 8(1) and 25.

Neither UPA Section 8(1) nor RUPA Section 203 provides any guidance concerning when property is “acquired by” the partnership.

That problem is dealt with in Section 204.

UPA Sections 25(2)(c) and (e) also provide that partnership property is not subject to exemptions, allowances, or rights of a partner’s spouse, heirs, or next of kin. Those provisions have been omitted as unnecessary. No substantive change is intended. Those exemptions and rights inure to the property of the partners, and not to partnership property.

53-3-204. When property is partnership property. — (a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One (1) or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One (1) or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one (1) or more of the partners, without an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes. [I.C., § 53-3-204, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

Joint Venture Property.

District court erred in finding that the backhoe purchased by the claimant was an asset of the joint venture, because from the evidence presented, the \$10,000 could have been simply the down payment to purchase

the backhoe, and the district court needed to determine the total cost of the backhoe, whether the claimant paid any money to purchase it, and how any such payments should be treated. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Conveyance.

Partnership property.

—Equal interests.

—Evidence.

—Intent.

—Mortgage.

—Realty.

Conveyance.

When legal title to partnership property is conveyed, a valid lien is created, provided that the title to the property is in the partnership and the conveyance is for partnership purposes. *Treasure Valley Bank v. Butcher*, 117 Idaho 974, 793 P.2d 206 (1990).

Partnership Property.

Property purchased on account of partnership becomes partnership property. *Gold Fork Lumber Co. v. Sweany & Smith Co.*, 35 Idaho 226, 205 P. 554 (1922).

The ultimate determination of whether an asset is partnership property depends on the parties' intent. *Murgoitio v. Murgoitio*, 111 Idaho 573, 726 P.2d 685 (1986).

The trial court's finding that the real property was owned by the partnership was supported by substantial and competent evidence, where all the property was purchased with partnership funds, the partnership made both the down payments and all of the mortgage payments, all the improvements were made with partnership labor or with labor and materials paid for by the partnership, and the improvements were depreciated on the partnership tax returns, the real property was occupied, managed and used as an integral part of the partnership businesses, and the partnership did not pay any compensation to the individual partners for its use of the properties. *Murgoitio v. Murgoitio*, 111 Idaho 573, 726 P.2d 685 (1986).

—Equal Interests.

Partners are presumed to possess equal interests in the partnership unless there is an agreement to the contrary. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

—Evidence.

Magistrate's conclusion that the personal property placed in the partnership by husband's parents "merged into the partnership" was supported by evidence that the bank account was used as partnership account,

equipment was depreciated and taken as partnership expense, capital assets (live-stock) were sold and divided between partners, expenses such as taxes, insurance, and maintenance of the assets were paid from partnership income and there was no accounting of capital accounts from year to year and no written agreement for one partner to pay the other assets contributed to the partnership. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

Where the magistrate's finding that partnership funds were used to construct the residence in which the parties to divorce action lived was supported by substantial, competent evidence, the residence was a partnership asset. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

—Intent.

The ultimate determination of whether particular assets are partnership property is dependent on the intention of the parties. *Shumway v. Shumway*, 106 Idaho 415, 679 P.2d 1133 (1984).

—Mortgage.

Mortgage on partnership property executed by partner as security for his individual debt does not bind partnership property in absence of approval by other partners. *Gold Fork Lumber Co. v. Sweany & Smith Co.*, 35 Idaho 226, 205 P. 554 (1922).

—Realty.

Evidence sustained finding that land including land recorded in name of one of the partners, and land recorded in name of a corporation, was owned by the partnership as partnership property. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

The common law view required that title to real estate be held by recognized legal persons, necessitating a holding by the courts that a partnership could not take title to realty in the firm name. *Treasure Valley Bank v. Butcher*, 117 Idaho 974, 793 P.2d 206 (1990).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 235 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 71-76.

A.L.R. — Right of partnership to recover

damages for injury to partner. 36 A.L.R.3d 1375.

Insurance on life of partner as partnership asset. 56 A.L.R.3d 892.

OFFICIAL COMMENT

1. Section 204 sets forth the rules for determining when property is acquired by the partnership and, hence, becomes partnership property. It is based on UPA Section 8(3), as influenced by the recent Alabama and Georgia modifications. The rules govern the acquisition of personal property, as well as real property, that is held in the partnership name. See Section 101(9)[(11)].

2. Subsection (a) governs the circumstances under which property becomes "partnership property," and subsection (b) clarifies the circumstances under which property is acquired "in the name of the partnership." The concept of record title is emphasized, although the term itself is not used. Titled personal property, as well as all transferable interests in real property acquired in the name of the partnership, are covered by this section.

Property becomes partnership property if acquired (1) in the name of the partnership or (2) in the name of one or more of the partners with an indication in the instrument transferring title of either (i) their capacity as partners or (ii) of the existence of a partnership, even if the name of the partnership is not indicated. Property acquired "in the name of the partnership" includes property acquired in the name of one or more partners in their capacity as partners, but only if the name of the partnership is indicated in the instrument transferring title.

Property transferred to a partner is partnership property, even though the name of the partnership is not indicated, if the instrument transferring title indicates either (i) the partner's capacity as a partner or (ii) the existence of a partnership. This is consonant with the entity theory of partnership and resolves the troublesome issue of a conveyance to fewer than all the partners but which nevertheless indicates their partner status.

3. Ultimately, it is the intention of the partners that controls whether property belongs to the partnership or to one or more of the partners in their individual capacities, at least as among the partners themselves. RUPA sets forth two rebuttable presumptions that apply when the partners have failed to express their intent.

First, under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held. The presumption

is intended to apply if partnership credit is used to obtain financing, as well as the use of partnership cash or property for payment. Unlike the rule in subsection (b), under which property is deemed to be partnership property if the partnership's name or the partner's capacity as a partner is disclosed in the instrument of conveyance, subsection (c) raises only a presumption that the property is partnership property if it is purchased with partnership assets.

That presumption is also subject to an important caveat. Under Section 302(b), partnership property held in the name of individual partners, without an indication of their capacity as partners or of the existence of a partnership, that is transferred by the partners in whose name title is held to a purchaser without knowledge that it is partnership property is free of any claims of the partnership.

Second, under subsection (d), property acquired in the name of one or more of the partners, without an indication of their capacity as partners and without use of partnership funds or credit, is presumed to be the partners' separate property, even if used for partnership purposes. In effect, it is presumed in that case that only the use of the property is contributed to the partnership.

4. Generally, under RUPA, partners and third parties dealing with partnerships will be able to rely on the record to determine whether property is owned by the partnership. The exception is property purchased with partnership funds without any reference to the partnership in the title documents. The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case of a purchaser without notice of the partnership's interest. This allocation of risk should encourage the partnership to eliminate doubt about ownership by putting title in the partnership.

5. UPA Section 8(4) provides, "A transfer to a partnership in the partnership name, even without words of inheritance, passes the entire estate or interest of the grantor unless a contrary intent appears." It has been omitted from RUPA as unnecessary because modern conveyancing law deems all transfers to pass the entire estate or interest of the grantor unless a contrary intent appears.

PART 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

53-3-301. Partner agent of partnership. — Subject to the effect of a statement of partnership authority under section 53-3-303, Idaho Code:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners. [I.C., § 53-3-301, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

Cited in: Lettunich v. Lettunich, 141 Idaho 425, 111 P.3d 110 (2005).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Agreement by less than majority.
Evidence.
Execution of mortgage.
Partner as agent.
Partnership business.
Sale of land.

Agreement by Less than Majority.

In action by broker for interference with rights under listing contract where only three of seven partners signed listing agreement with a real estate broker to sell partnership property and broker did not allege that the three had authority to bind the whole partnership, such agreement was void ab initio and broker failed to establish the prima facie existence of a contract; accordingly, his complaint failed to state a cause of action on which relief could be granted. *Southern Idaho Realty of Twin Falls, Inc. v. Larry J. Hellhake & Assocs.*, 102 Idaho 613, 636 P.2d 168 (1981).

Evidence.

On an issue whether declarations of a partner made in connection with the purchase of certain articles were in the course of the firm business, testimony that such articles were customarily purchased and used by persons engaged in business of the kind conducted by the firm is admissible. *Boise Payette Lumber Co. v. Sarret*, 38 Idaho 278, 221 P. 130 (1923).

Execution of Mortgage.

The giving of a mortgage upon firm property, by a partner to secure his individual debt, is not an act for apparently carrying on in the usual way the business of the partnership, and does not bind the partnership unless authorized by the other partners. *Gold Fork Lumber Co. v. Sweany & Smith Co.*, 35 Idaho 226, 205 P. 554 (1922).

Partner as Agent.

Power of partner to act as agent is limited to transactions within scope of partnership business. *Gold Fork Lumber Co. v. Sweany & Smith Co.*, 35 Idaho 226, 205 P. 554 (1922).

Partnership Business.

Where partnership consisting of three partners pledged bonds as collateral security, and two partners without consent of third thereafter sold their interest in bonds to pledgee as payment of two-thirds of partnership indebtedness, sale was not in ordinary course of partnership business and therefore could not bind partnership in absence of specific concur-

rence of all partners. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Sale of Land.

Where the contract of sale stated that the land belonged to the partnership, and, even if plaintiff believed that the exclusive manager

had authority to transact all business for the firm, he still could not bind the partnership through a unilateral act which was not in the usual business of the partnership; therefore the trial court erred in holding that the contract was binding on the partnership. *Hodge v. Garrett*, 101 Idaho 397, 614 P.2d 420 (1980).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 205 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 133-173.

A.L.R. — Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner. 4 A.L.R.4th 1122.

OFFICIAL COMMENT

1. Section 301 sets forth a partner's power, as an agent of the firm, to bind the partnership entity to third parties. The rights of the partners among themselves, including the right to restrict a partner's authority, are governed by the partnership agreement and by Section 401.

The agency rules set forth in Section 301 are subject to an important qualification. They may be affected by the filing or recording of a statement of partnership authority. The legal effect of filing or recording a statement of partnership authority is set forth in Section 303.

2. Section 301(1) retains the basic principles reflected in UPA Section 9(1). It declares that each partner is an agent of the partnership and that, by virtue of partnership status, each partner has apparent authority to bind the partnership in ordinary course transactions. The effect of Section 301(1) is to characterize a partner as a general managerial agent having both actual and apparent authority co-extensive in scope with the firm's ordinary business, at least in the absence of a contrary partnership agreement.

Section 301(1) effects two changes from UPA Section 9(1). First, it clarifies that a partner's apparent authority includes acts for carrying on in the ordinary course "business of the kind carried on by the partnership," not just the business of the particular partnership in question. The UPA is ambiguous on this point, but there is some authority for an expanded construction in accordance with the so-called English rule. See, e.g., *Burns v. Gonzalez*, 439 S.W.2d 128, 131 (Tex. Civ. App. 1969) (dictum); *Commercial Hotel Co. v. Weeks*, 254 S.W. 521 (Tex. Civ. App. 1923). No substantive change is intended by use of the more customary phrase "carrying on in the ordinary course" in lieu of the UPA phrase "in the usual way." The UPA and the case law use both terms without apparent distinction.

The other change from the UPA concerns

the allocation of risk of a partner's lack of authority. RUPA draws the line somewhat differently from the UPA.

Under UPA Section 9(1) and (4), only a person with knowledge of a restriction on a partner's authority is bound by it. Section 301(1) provides that a person who has received a notification of a partner's lack of authority is also bound. The meaning of "receives a notification" is explained in Section 102(d). Thus, the partnership may protect itself from unauthorized acts by giving a notification of a restriction on a partner's authority to a person dealing with that partner. A notification may be effective upon delivery, whether or not it actually comes to the other person's attention. To that extent, the risk of lack of authority is shifted to those dealing with partners.

On the other hand, as used in the UPA, the term "knowledge" embodies the concept of "bad faith" knowledge arising from other known facts. As used in RUPA, however, "knowledge" is limited to actual knowledge. See Section 102(a). Thus, RUPA does not expose persons dealing with a partner to the greater risk of being bound by a restriction based on their purported reason to know of the partner's lack of authority from all the facts they did know. Compare Section 102(b)(3) (notice).

With one exception, this result is not affected even if the partnership files a statement of partnership authority containing a limitation on a partner's authority. Section 303(f) makes clear that a person dealing with a partner is not deemed to know of such a limitation merely because it is contained in a filed statement of authority. Under Section 303(e), however, all persons are deemed to know of a limitation on the authority of a partner to transfer real property contained in a recorded statement. Thus, a recorded limitation on authority concerning real property constitutes constructive knowledge of the limitation to the whole world.

3. Section 301(2) is drawn directly from UPA Section 9(2), with conforming changes to mirror the new language of subsection (1). Subsection (2) makes it clear that the partnership is bound by a partner's actual authority, even if the partner has no apparent authority. Section 401(j) requires the unanimous consent of the partners for a grant of authority outside the ordinary course of business, unless the partnership agreement provides otherwise. Under general agency principles, the partners can subsequently ratify a partner's unauthorized act. See Section 104(a).

4. UPA Section 9(3) contains a list of five extraordinary acts that require unanimous consent of the partners before the partnership is bound. RUPA omits that section. That

leaves it to the courts to decide the outer limits of the agency power of a partner. Most of the acts listed in UPA Section 9(3) probably remain outside the apparent authority of a partner under RUPA, such as disposing of the goodwill of the business, but elimination of a statutory rule will afford more flexibility in some situations specified in UPA Section 9(3). In particular, it seems archaic that the submission of a partnership claim to arbitration always requires unanimous consent. See UPA § 9(3)(e).

5. Section 301(1) fully reflects the principle embodied in UPA Section 9(4) that the partnership is not bound by an act of a partner in contravention of a restriction on his authority known to the other party.

53-3-302. Transfer of partnership property. — (a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under section 53-3-303, Idaho Code, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 53-3-301, Idaho Code, and:

(1) As to a subsequent transferee who gave value for property transferred under subsections (a)(1) and (2) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b) of this section, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document. [I.C., § 53-3-302, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Contract not binding.
Valid lien created.

Contract Not Binding.

Where the contract of sale stated that the land belonged to the partnership, and, even if plaintiff believed that the exclusive manager had authority to transact all business for the firm, he still could not bind the partnership through a unilateral act which was not in the usual business of the partnership; therefore the trial court erred in holding that the contract was binding on the partnership. *Hodge*

v. *Garrett*, 101 Idaho 397, 614 P.2d 420 (1980).

Valid Lien Created.

When legal title to partnership property is conveyed, a valid lien is created, provided that the title to the property is in the partnership and the conveyance is for partnership purposes. *Treasure Valley Bank v. Butcher*, 117 Idaho 974, 793 P.2d 206 (1990).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 260 et seq.

C.J.S. — 68 C.J.S., Partnership, § 73 et seq.

OFFICIAL COMMENT

1. Section 302 replaces UPA Section 10 and provides rules for the transfer and recovery of partnership property.* The language is adapted in part from Section 14-8-10 of the Georgia partnership statute.

2. Subsection (a)(1) deals with the transfer of partnership property held in the name of the partnership and subsection (a)(2) with property held in the name of one or more of the partners with an indication either of their capacity as partners or of the existence of a partnership. Subsection (a)(3) deals with partnership property held in the name of one or more of the partners without an indication of their capacity as partners or of the existence of a partnership. Like the general agency rules in Section 301, the power of a partner to transfer partnership property under subsection (a)(1) is subject to the effect under Section 303 of the filing or recording of a statement of partnership authority. These rules are intended to foster reliance on record title.

UPA Section 10 covers only real property. Section 302, however, also governs the transfer of partnership personal property acquired by instrument and held in the name of the partnership or one or more of the partners.

3. Subsection (b) deals with the right of the

partnership to recover partnership property transferred by a partner without authority. Subsection (b)(1) deals with the recovery of property held in either the name of the partnership or the name of one or more of the partners with an indication of their capacity as partners or of the existence of a partnership, while subsection (b)(2) deals with the recovery of property held in the name of one or more persons without an indication of their capacity as partners or of the existence of a partnership.

In either case, a transfer of partnership property may be avoided only if the partnership proves that it was not bound under Section 301 by the execution of the instrument of initial transfer. Under Section 301, the partnership is bound by a transfer in the ordinary course of business, unless the transferee actually knew or had received a notification of the partner's lack of authority. See Section 102(a) and (d). The reference to Section 301, rather than Section 301(1), is intended to clarify that a partner's actual authority is not revoked by Section 302. Compare UPA § 10(1) (refers to partner's authority under Section 9(1)).

The burden of proof is on the partnership to

prove the partner's lack of authority and, in the case of a subsequent transferee, the transferee's knowledge or notification thereof. Thus, even if the transfer to the initial transferee could be avoided, the partnership may not recover the property from a subsequent purchaser or other transferee for value unless it also proves that the subsequent transferee knew or had received a notification of the partner's lack of authority with respect to the initial transfer. Since knowledge is required, rather than notice, a remote purchaser has no duty to inquire as to the authority for the initial transfer, even if he knows it was partnership property.

The burden of proof is on the transferee to show that value was given. Value, as used in this context, is synonymous with valuable consideration and means any consideration sufficient to support a simple contract.

The burden of proof on all other issues is allocated to the partnership because it is generally in a better position than the transferee to produce the evidence. Moreover, the partnership may protect itself against unauthorized transfers by ensuring that partnership real property is held in the name of the partnership and that a statement of partnership authority is recorded specifying any limitations on the partners' authority to convey real property. Under Section 303(e), transferees of real property held in the partnership name are conclusively bound by those limitations. On the other hand, transferees can protect themselves by insisting that the partnership record a statement specifying who is authorized to transfer partnership property. Under Section 303(d), transferees for value, without actual knowledge to the contrary, may rely on that grant of authority.

4. Subsection (b)(2) replaces UPA Section 10(3) and provides that partners who hold partnership property in their own names, without an indication in the record of their capacity as partners or of the existence of a partnership, may transfer good title to a transferee for value without knowledge or a

notification that it was partnership property. To recover the property under this subsection, the partnership has the burden of proving that the transferee knew or had received a notification of the partnership's interest in the property, as well as of the partner's lack of authority for the initial transfer.

5. Subsection (c) is new and provides that property may not be recovered by the partnership from a remote transferee if any intermediate transferee of the property would have prevailed against the partnership. Cf. Uniform Fraudulent Transfer Act, §§ 8(a) (subsequent transferee from bona fide purchaser protected), 8(b)(2) (same).

6. Subsection (d) is new. The UPA does not have a provision dealing with the situation in which all of the partners' interests in the partnership are held by one person, such as a surviving partner or a purchaser of all the other partners' interests. Subsection (d) allows for clear record title, even though the partnership no longer exists as a technical matter. When a partnership becomes a sole proprietorship by reason of the dissociation of all but one of the partners, title vests in the remaining "partner," although there is no "transfer" of the property. The remaining "partner" may execute a deed or other transfer of record in the name of the non-existent partnership to evidence vesting of the property in that person's individual capacity.

7. UPA Section 10(2) provides that, where title to real property is in the partnership name, a conveyance by a partner in his own name transfers the partnership's equitable interest in the property. It has been omitted as was done in Georgia and Florida. In this situation, the conveyance is clearly outside the chain of title and so should not pass title or any interest in the property. UPA Section 10(2) dilutes, albeit slightly, the effect of record title and is, therefore, inconsistent with RUPA's broad policy of fostering reliance on the record.

UPA Section 10(4) and (5) have also been omitted. Those situations are now adequately covered by Section 302(a).

53-3-303. Statement of partnership authority. — (a) A partnership may file a statement of partnership authority, which:

(1) Must include:

- (i) The name of the partnership which shall not include words of organization which deceptively imply that the partnership is a different kind of legal entity and must be distinguishable upon the records of the secretary of state from the name of any other legal entity whose organizational documents are filed with the secretary of state, unless such other entity consents in writing to the use of the name;
- (ii) The street address of its chief executive office and of one (1) office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown, and shall be authorized to accept service of process on behalf of the partnership.

(c) If a filed statement of partnership authority is executed pursuant to section 53-3-105(b), Idaho Code, and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) A grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a statement containing the limitation has been filed in the office of the secretary of state.

(f) Except as otherwise provided in subsections (d) and (e) of this section and sections 53-3-704 and 53-3-805, Idaho Code, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement. [I.C., § 53-3-303, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 325, § 4, p. 1095.]

OFFICIAL COMMENT

1. Section 303 is new. It provides for an optional statement of partnership authority specifying the names of the partners authorized to execute instruments transferring real property held in the name of the partnership. It may also grant supplementary authority to partners, or limit their authority, to enter into other transactions on behalf of the partnership. The execution, filing, and recording of statements is governed by Section 105.

RUPA follows the lead of California and Georgia in authorizing the optional filing of statements of authority. Filing a statement of partnership authority may be deemed to satisfy the disclosure required by a State's fictitious name statute, if the State so chooses.

Section 105 provides for the central filing of

statements, rather than local filing. However, to be effective in connection with the transfer of real property, a statement of partnership authority must also be recorded locally with the land records.

2. The most important goal of the statement of authority is to facilitate the transfer of real property held in the name of the partnership. A statement must specify the names of the partners authorized to execute an instrument transferring that property.

Under subsection (d)(2), a recorded grant of authority to transfer real property held in the name of the partnership is conclusive in favor of a transferee for value without actual knowledge to the contrary. A partner's authority to transfer partnership real property is

affected by a recorded statement only if the property is held in the name of the partnership. A recorded statement has no effect on the partners' authority to transfer partnership real property that is held other than in the name of the partnership. In that case, by definition, the record will not indicate the name of the partnership, and thus the partnership's interest would not be disclosed by a title search. See Section 204. To be effective, the statement recorded with the land records must be a certified copy of the original statement filed with the Secretary of State. See Section 105(b).

The presumption of authority created by subsection (d)(2) operates only so long as and to the extent that a limitation on the partner's authority is not contained in another recorded statement. This is intended to condition reliance on the record to situations where there is no conflict among recorded statements, amendments, or denials of authority. See Section 304. If the record is in conflict regarding a partner's authority, transferees must go outside the record to determine the partners' actual authority. This rule is modified slightly in the case of a cancellation of a limitation on a partner's authority, which revives the previous grant of authority.

Under subsection (e), third parties are deemed to know of a recorded limitation on the authority of a partner to transfer real property held in the partnership name. Since transferees are bound under Section 301 by knowledge of a limitation on a partner's authority, they are bound by such a recorded limitation. Of course, a transferee with actual knowledge of a limitation on a partner's authority is bound under Section 301, whether or not there is a recorded statement of limitation.

3. A statement of partnership authority may have effect beyond the transfer of real property held in the name of the partnership. Under subsection (a)(2), a statement of authority may contain any other matter the partnership chooses, including a grant of authority, or a limitation on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership. Since Section 301 confers authority on all partners to act for the partnership in ordinary matters, the real import of such a provision is to grant extraordinary authority, or to limit the ordinary authority, of some or all of the partners.

The effect given to such a provision is different from that accorded a provision regarding the transfer of real property. Under subsection (d)(1), a filed grant of authority is binding on the partnership, in favor of a person who gives value without actual knowl-

edge to the contrary, unless limited by another filed statement. That is the same rule as for statements involving real property under subsection 301(d)(2). There is, however, no counterpart to subsection (e) regarding a filed limitation of authority. To the contrary, subsection (f) makes clear that filing a limitation of authority does not operate as constructive knowledge of a partner's lack of authority with respect to non-real property transactions.

Under Section 301, only a third party who knows or has received a notification of a partner's lack of authority in an ordinary course transaction is bound. Thus, a limitation on a partner's authority to transfer personal property or to enter into other non-real property transactions on behalf of the partnership, contained in a filed statement of partnership authority, is effective only against a third party who knows or has received a notification of it. The fact of the statement being filed has no legal significance in those transactions, although the filed statement is a potential source of actual knowledge to third parties.

4. It should be emphasized that Section 303 concerns the authority of partners to bind the partnership to third persons. As among the partners, the authority of a partner to take any action is governed by the partnership agreement, or by the provisions of RUPA governing the relations among partners, and is not affected by the filing or recording of a statement of partnership authority.

5. The exercise of the option to file a statement of partnership authority imposes a further disclosure obligation on the partnership. Under subsection (a)(1), a filed statement must include the street address of its chief executive office and of an office in the State (if any), as well as the names and mailing addresses of all of the partners or, alternatively, of an agent appointed and maintained by the partnership for the purpose of maintaining such a list. If an agent is appointed, subsection (b) provides that the agent shall maintain a list of all of the partners and make it available to any person on request for good cause shown. Under subsection (c), the failure to make all of the required disclosures does not affect the statement's operative effect, however.

6. Under subsection (g), a statement of authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed.

7. Section 308(c) makes clear that a person does not become a partner solely because he is named as a partner in a statement of partnership authority filed by another person. See also Section 304 ("person named as a partner" may file statement of denial).

53-3-304. Statement of denial. — A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 53-3-303(b), Idaho Code, may file a statement of denial stating the name of the partnership, the date of filing of its statement of partnership authority, and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 53-3-303(d) and (e), Idaho Code. [I.C., § 53-3-304, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Attachment of Partner's Interest.

Where no charging order was acquired pursuant to this section, and an attachment was levied against partner's interest in partnership property, such attachment was "wrong-

ful", and the partnership could recover damages therefor. *Tom Nakamura, Inc. v. G. & G. Produce Co.*, 93 Idaho 183, 457 P.2d 422 (1969).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 208.

C.J.S. — 68 C.J.S., Partnership, §§ 24, 34, 197.

OFFICIAL COMMENT

Section 304 is new and complements Section 303. It provides partners (and persons named as partners) an opportunity to deny any fact asserted in a statement of partnership authority, including denial of a person's status as a partner or of another person's authority as a partner. A statement of denial must be executed, filed, and recorded pursuant to the requirements of Section 105.

Section 304 does not address the consequences of a denial of partnership. No adverse inference should be drawn from the failure of a person named as a partner to deny such status, however. See Section 308(c) (person not liable as a partner merely because named in statement as a partner).

A statement of denial operates as a limitation on a partner's authority to the extent provided in Section 303. Section 303(d) pro-

vides that a filed or recorded statement of partnership authority is conclusive, in favor of purchasers without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not contained in another filed or recorded statement. A filed or recorded statement of denial operates as such a limitation on authority, thereby precluding reliance on an inconsistent grant of authority. Under Section 303(d), a filed or recorded cancellation of a statement of denial that operates as a limitation on authority revives the previous grant of authority.

Under Section 303(e), a recorded statement of denial of a partner's authority to transfer partnership real property held in the partnership name constitutes constructive knowledge of that limitation.

53-3-305. Partnership liable for partner's actionable conduct. —

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or

property is misapplied by a partner, the partnership is liable for the loss. [I.C., § 53-3-305, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 305(a), which is derived from UPA Section 13, imposes liability on the partnership for the wrongful acts of a partner acting in the ordinary course of the partnership's business or otherwise within the partner's authority. The scope of the section has been expanded by deleting from UPA Section 13, "not being a partner in the partnership." This is intended to permit a partner to sue the partnership on a tort or other theory during the term of the partnership, rather than being limited to the remedies of dissolution and an accounting. See also Comment 2 to Section 405.

The section has also been broadened to cover no-fault torts by the addition of the phrase, "or other actionable conduct."

The section has also been broadened to cover no-fault torts by the addition of the

phrase, "or other actionable conduct."

The phrase in UPA Section 13, "to the same extent as the partner so acting or omitting to act," has been deleted to prevent a partnership from asserting a partner's immunity from liability. This is consistent with the general agency rule that a principal is not entitled to its agent's immunities. See Restatement (Second) of Agency § 217(b) (1957). The deletion is not intended to limit a partnership's contractual rights.

Section 305(b) is drawn from UPA Section 14(b), but has been edited to improve clarity. It imposes strict liability on the partnership for the misapplication of money or property received by a partner in the course of the partnership's business or otherwise within the scope of the partner's actual authority.

53-3-306. Partner's liability. — (a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 53-3-1001(b), Idaho Code. This subsection shall not affect the liability of a partner in a limited liability partnership for his own omissions, negligence, wrongful acts, misconduct or malpractice or that of any person under his direct supervision and control. [I.C., § 53-3-306, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Claim against partnership.
Joint and several liability.
Jurisdiction.
Purchasing stolen property.

Claim Against Partnership.

District court abused its discretion in dismissing law partner from a malpractice claim against legal partnership and, thus, incorrectly awarded attorney fees to the dismissed partner. *Webster v. Hoopers*, 126 Idaho 96, 878 P.2d 795 (Ct. App. 1994).

Joint and Several Liability.

All partners are liable jointly and severally for everything chargeable to the partnership. *Owyhee County v. Rife*, 100 Idaho 91, 593 P.2d 995 (1979).

Individual partners of a partnership were liable for their partnership's tax deficiency simply because they were partners. *Livingston v. United States*, 793 F. Supp. 251 (D. Idaho 1992).

Jurisdiction.

Where the facts recited by the partner plaintiff in opposition to the defendants' re-

quest for summary judgment referred only to acts or omissions of one of the other partners, there was no authority under this section for a suit against the partnership; the legislature authorized suits against a partnership for personal injuries only by a person who is not a partner when the claim is based on a wrongful act or omission of a partner. *Nedrow v. Unigard Security Ins. Co.*, 132 Idaho 421, 974 P.2d 67 (1998).

Purchasing Stolen Property.

Where a partnership engaged in the junk business purchased parts of a tractor which had been stolen by the seller, the owner from whom the parts were stolen could sue the copartners jointly or any member of the copartnership individually for the conversion. *Klam v. Koppel*, 63 Idaho 171, 118 P.2d 729 (1941).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 348 et seq., 399 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 95, 96.

A.L.R. — Liability of transferor of business operated under trade name for supplies fur-

nished to successor by one without notice of transfer. 70 A.L.R.3d 1250.

Vicarious liability of attorney for tort of partner in law firm. 70 A.L.R.3d 1298.

OFFICIAL COMMENT

1. Section 306(a) changes the UPA rule by imposing joint and several liability on the partners for all partnership obligations where the partnership is not a limited liability partnership. Under UPA Section 15, partners' liability for torts is joint and several, while their liability for contracts is joint but not several. About ten States that have adopted the UPA already provide for joint and several liability. The UPA reference to "debts and obligations" is redundant, and no change is intended by RUPA's reference solely to "obligations."

Joint and several liability under RUPA differs, however, from the classic model, which permits a judgment creditor to proceed immediately against any of the joint and several judgment debtors. Generally, Section 307(d) requires the judgment creditor to exhaust the partnership's assets before enforcing a judgment against the separate assets of a partner.

2. RUPA continues the UPA scheme of liability with respect to an incoming partner, but states the rule more clearly and simply. Under Section 306(a), an incoming partner becomes jointly and severally liable, as a partner, for all partnership obligations, except as otherwise provided in subsection (b). That subsection eliminates an incoming partner's personal liability for partnership obligations incurred before his admission as a partner. In

effect, a new partner has no personal liability to existing creditors of the partnership, and only his investment in the firm is at risk for the satisfaction of existing partnership debts. That is presently the rule under UPA Sections 17 and 41(7), and no substantive change is intended. As under the UPA, a new partner's personal assets are at risk with respect to partnership liabilities incurred after his admission as a partner.

3. Subsection (c) alters classic joint and several liability of general partners for obligations of a partnership that is a limited liability partnership. Like shareholders of a corporation and members of a limited liability company, partners of a limited liability partnership are not personally liable for partnership obligations incurred while the partnership liability shield is in place solely because they are partners. As with shareholders of a corporation and members of a limited liability company, partners remain personally liable for their personal misconduct.

In cases of partner misconduct, Section 401(c) sets forth a partnership's obligation to indemnify the culpable partner where the partner's liability was incurred in the ordinary course of the partnership's business. When indemnification occurs, the assets of both the partnership and the culpable partner are available to a creditor. However, Sections

306(c), 401(b), and 807(b) make clear that a partner who is not otherwise liable under Section 306(c) is not obligated to contribute assets to the partnership in excess of agreed contributions to share the loss with the culpable partner. (See Comments to Sections 401(b) and 807(b) regarding a slight variation in the context of priority of payment of partnership obligations.) Accordingly, Section 306(c) makes clear that an innocent partner is not personally liable for specified partnership obligations, directly or indirectly, by way of contribution or otherwise.

Although the liability shield protections of Section 306(c) may be modified in part or in full in a partnership agreement (and by way of private contractual guarantees), the modifications must constitute an intentional waiver of the liability protections. See Sections 103(b), 104(a), and 902(b). Since the mere act of filing a statement of qualification reflects the assumption that the partners intend to modify the otherwise applicable partner liability rules, the final sentence of subsection (c) makes clear that the filing negates inconsistent aspects of the partnership agreement that existed immediately before the vote to approve becoming a limited liability partnership. The negation only applies to a partner's personal liability for future partnership obligations. The filing however has no effect as to previously created partner obligations to the partnership in the form of specific capital contribution requirements.

Inter se contribution agreements may erode part or all of the effects of the liability shield. For example, Section 807(f) provides that an assignee for the benefit of creditors of a partnership or a partner may enforce a partner's obligation to contribute to the partnership. The ultimate effect of such contribution obligations may make each partner jointly and severally liable for all partnership obligations — even those incurred while the partnership is a limited liability partnership. Although the final sentence of subsection (c) negates such provisions existing before a statement of qualification is filed, it will have no effect on any amendments to the partnership agreement after the statement is filed.

The connection between partner status and personal liability for partnership obligations

is severed only with respect to obligations incurred while the partnership is a limited liability partnership. Partnership obligations incurred before a partnership becomes a limited liability partnership or incurred after limited liability partnership status is revoked or canceled are treated as obligations of an ordinary partnership. See Sections 1001 (filing), 1003 (revocation), and 1006 (cancellation). Obligations incurred by a partnership during the period when its statement of qualification is administratively revoked will be considered as incurred by a limited liability partnership provided the partnership's status as such is reinstated within two years under Section 1003(e). See Section 1003(f).

When an obligation is incurred is determined by other law. See Section 104(a). Under that law, and for the limited purpose of determining when partnership contract obligations are incurred, the reasonable expectations of creditors and the partners are paramount. Therefore, partnership obligations under or relating to a note, contract, or other agreement generally are incurred when the note, contract, or other agreement is made. Also, an amendment, modification, extension, or renewal of a note, contract, or other agreement should not affect or otherwise reset the time at which a partnership obligation under or relating to that note, contract, or other agreement is incurred, even as to a claim that relates to the subject matter of the amendment, modification, extension, or renewal. A note, contract, or other agreement may expressly modify these rules and fix the time a partnership obligation is incurred thereunder.

For the limited purpose of determining when partnership tort obligations are incurred, a distinction is intended between injury and the conduct causing that injury. The purpose of the distinction is to prevent unjust results. Partnership obligations under or relating to a tort generally are incurred when the tort conduct occurs rather than at the time of the actual injury or harm. This interpretation prevents a culpable partnership from engaging in wrongful conduct and then filing a statement of qualification to sever the vicarious responsibility of its partners for future injury or harm caused by conduct that occurred prior to the filing.

53-3-307. Actions by and against partnership and partners. —

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with section 53-3-306, Idaho Code, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 53-3-306, Idaho Code, and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 53-3-308, Idaho Code. [I.C., § 53-3-307, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

1. Section 307 is new. Subsection (a) provides that a partnership may sue and be sued in the partnership name. That entity approach is designed to simplify suits by and against a partnership.

At common law, a partnership, not being a legal entity, could not sue or be sued in the firm name. The UPA itself is silent on this point, so in the absence of another enabling statute, it is generally necessary to join all the partners in an action against the partnership.

Most States have statutes or rules authorizing partnerships to sue or be sued in the partnership name. Many of those statutes, however, are found in the state provisions dealing with civil procedure rather than in the partnership act.

2. Subsection (b) provides that suit generally may be brought against the partnership and any or all of the partners in the same action or in separate actions. It is intended to clarify that the partners need not be named in an action against the partnership. In particular, in an action against a partnership, it is not necessary to name a partner individually in addition to the partnership. This will simplify and reduce the cost of litigation, especially in cases of small claims where there are known to be significant partnership assets and thus no necessity to collect the judgment out of the partners' assets.

Where the partnership is a limited liability partnership, the limited liability partnership rules clarify that a partner not liable for the alleged partnership obligation may not be named in the action against the partnership unless the action also seeks to establish personal liability of the partner for the obligation. See subsections (b) and (d).

3. Subsection (c) provides that a judgment against the partnership is not, standing alone, a judgment against the partners, and it cannot be satisfied from a partner's personal assets unless there is a judgment against the partner. Thus, a partner must be individually named and served, either in the action against the partnership or in a later suit, before his personal assets may be subject to levy for a claim against the partnership.

RUPA leaves it to the law of judgments, as did the UPA, to determine the collateral effects to be accorded a prior judgment for or against the partnership in a subsequent action against a partner individually. See Section 60 of the Second Restatement of Judgments (1982) and the Comments thereto.

4. Subsection (d) requires partnership creditors to exhaust the partnership's assets before levying on a judgment debtor partner's individual property where the partner is personally liable for the partnership obligation under Section 306. That rule respects the

concept of the partnership as an entity and makes partners more in the nature of guarantors than principal debtors on every partnership debt. It is already the law in some States.

As a general rule, a final judgment against a partner cannot be enforced by a creditor against the partner's separate assets unless a writ of execution against the partnership has been returned unsatisfied. Under subsection (d), however, a creditor may proceed directly against the partner's assets if (i) the partnership is a debtor in bankruptcy (see Section 101(2)); (ii) the partner has consented; or (iii) the liability is imposed on the partner independently of the partnership. For example, a judgment creditor may proceed directly against the assets of a partner who is liable independently as the primary tortfeasor, but must exhaust the partnership's assets before proceeding against the separate assets of the other partners who are liable only as partners.

There is also a judicial override provision in subsection (d)(4). A court may authorize execution against the partner's assets on the grounds that (i) the partnership's assets are

clearly insufficient; (ii) exhaustion of the partnership's assets would be excessively burdensome; or (iii) it is otherwise equitable to do so. For example, if the partners who are parties to the action have assets located in the forum State, but the partnership does not, a court might find that exhaustion of the partnership's assets would be excessively burdensome.

5. Although subsection (d) is silent with respect to pre-judgment remedies, the law of pre-judgment remedies already adequately embodies the principle that partnership assets should be exhausted before partners' assets are attached or garnished. Attachment, for example, typically requires a showing that the partnership's assets are being secreted or fraudulently transferred or are otherwise inadequate to satisfy the plaintiff's claim. A showing of some exigent circumstance may also be required to satisfy due process. See *Connecticut v. Doehr*, 501 U.S. 1, 16 (1991).

6. Subsection (e) clarifies that actions against the partnership under Section 308, involving representations by partners or purported partners, are subject to Section 307.

53-3-308. Liability of purported partner. — (a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one (1) or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one (1) or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons. [I.C., § 53-3-308, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

General reputation.
Partner by estoppel.
Representations.

General Reputation.

General reputation or common report cannot be shown to establish partnership relation except in connection with duly established facts that person sought to be charged has permitted or impliedly consented to be held out as partner, and that such holding out induced party extending credit to become creditor of firm. *Orofino Rochdale Co. v. Shore Lumber Co.*, 43 Idaho 425, 252 P. 487 (1927).

Partner by Estoppel.

Where a creditor fails to show that representations of partnership were made to him, on the faith of which he extended credit, he

cannot establish estoppel on the part of an alleged partner. *Orofino Rochdale Co. v. Shore Lumber Co.*, 43 Idaho 425, 252 P. 487 (1927).

Representations.

It must be shown that parties sought to be held had by words spoken or written or by their contract represented themselves, or consented to be represented, as partners, on faith of which representation credit had been extended; or that such representations had been made in public manner and communicated to party extending credit. *Orofino Rochdale Co. v. Shore Lumber Co.*, 43 Idaho 425, 252 P. 487 (1927).

RESEARCH REFERENCES

C.J.S. — 68 C.J.S., Partnership, § 24.

OFFICIAL COMMENT

Section 308 continues the basic principles of partnership by estoppel under UPA Section 16, now more accurately entitled "Liability of Purported Partner." Subsection (a) continues the distinction between representations made to specific persons and those made in a public manner. It is the exclusive basis for imposing liability as a partner on persons who are not partners in fact. As under the UPA, there is no duty of denial, and thus a person held out by another as a partner is not liable unless he actually consents to the representation. See the Official Comment to UPA Section 16. Also see Section 308(c) (no duty to file statement of denial) and Section 308(d) (no duty to file statement of dissociation or to amend statement of partnership authority).

Subsection (b) emphasizes that the persons being protected by Section 308 are those who enter into transactions in reliance upon a representation. If all of the partners of an

existing partnership consent to the representation, a partnership obligation results. Apart from Section 308, the firm may be bound in other situations under general principles of apparent authority or ratification.

If a partnership liability results under Section 308, the creditor must exhaust the partnership's assets before seeking to satisfy the claim from the partners. See Section 307.

Subsections (c) and (d) are new and deal with potential negative inferences to be drawn from a failure to correct inaccurate or outdated filed statements. Subsection (c) makes clear that an otherwise innocent person is not liable as a partner for failing to deny his partnership status as asserted by a third person in a statement of partnership authority. Under subsection (d), a partner's liability as a partner does not continue after dissociation solely because of a failure to file a statement of dissociation.

Subsection (e) is derived from UPA Section 7(1). It means that only those persons who are partners as among themselves are liable as partners to third parties for the obligations of the partnership, except for liabilities incurred by purported partners under Section 308(a) and (b).

PART 4. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

53-3-401. Partner's rights and duties. — (a) Each partner is deemed to have an account that is:

- (1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
- (2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section 53-3-301, Idaho Code. [I.C., § 53-3-401, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Agreements of partners.
Authority of partners.
Bankruptcy actions.
Compensation.
Demand for accounting.
Reimbursement for partnership expenses.
Sale of interest.
Winding up.
—Expenses.

Agreements of Partners.

Admission in pleadings that partners agreed to share profits equally held not to preclude one partner from showing by competent evidence that he was entitled to a salary for managing the partnership business, as “profits” are funds remaining after all sums including salaries are deducted. *Duthweiler v. Hanson*, 54 Idaho 46, 28 P.2d 210 (1933).

Any agreements made between the partners, pertaining to the rights and duties of the partners in relation to the partnership, are controlling as to the partners and the partnership. *Treasure Valley Bank v. Butcher*, 117 Idaho 974, 793 P.2d 206 (1990).

Authority of Partners.

An equal partner in a two-man partnership does not have the authority to hire a new employee in disregard of the objection of the other partner and the objecting partner may not be charged with the costs incurred as a result of the unilateral decision to hire a third party. *Summers v. Dooley*, 94 Idaho 87, 481 P.2d 318 (1971).

Where the partners mutually agreed that the partnership was to be dissolved, either partner had the right to wind up the partnership affairs in accordance with the agreement. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Bankruptcy Actions.

A partnership may file a voluntary bankruptcy petition under Chapter 7 or 11 of the United States Code and a general partner may file an involuntary petition against a partnership. Only in such a situation are the assets of the partnership part of the estate and subject to the bankruptcy court's control and only then may such court act to prevent any allegedly wrongful disposition of partnership property. *In re Wallen*, 43 Bankr. 408 (Bankr. D. Idaho 1984).

Compensation.

Compensation to a partner for services outside those contemplated by the partnership agreement, which benefit the partnership,

may properly be awarded. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

Demand for Accounting.

In suit by pledgee against partnership to foreclose pledges of assets in form of bonds, two partners having sold their interest in bonds to pledgee without consent of third, court properly decreed partnership accounting and settlement on application of third partner. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Reimbursement for Partnership Expenses.

Where finding that partners made full and complete settlement and accounting of all their dealings in 1931 was sustained by evidence, any indebtedness owing to partner, who allegedly paid purchase price, freight and cost of handling of seed potatoes purchased by partnership in 1928, was discharged, and partner was not entitled in subsequent accounting proceeding to credit for such expenditures. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Sale of Interest.

Where three copartners pledged bonds and two of partners without consent of the other sold their interest to pledgee as payment of two-thirds of partnership indebtedness, it was proper to treat this transfer as advancement to partnership, and therefore pledgee suing partnership was entitled, as successor to two partners, to interest from date of advancement to date of final decree on partnership settlement. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Winding Up.

—Expenses.

Where claims of the dominant or managing partner against the partnership are questioned, the managing partner has the burden of proving that the claimed expenses, incurred during dissolution, are reasonable and necessary. *Burnham v. Bray*, 104 Idaho 550,

661 P.2d 335 (Ct. App. 1983).

Where partnership combines were sold through partners' corporation during winding up, the reasonable costs of repairing combines and a customary ten percent sales commis-

sion to corporation were properly charged to the partnership; however, a \$500 finder's fee for the person who found buyer of combine could not be so charged. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 272 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 8-24.

A.L.R. — Licensed real-estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 A.L.R.3d 523.

Construction and application of expulsion provision in medical partnership agreement. 87 A.L.R.3d 328.

Tort action for personal injury or property damage by partner against another partner or the partnership. 39 A.L.R.4th 139.

OFFICIAL COMMENT

1. Section 401 is drawn substantially from UPA Section 18. It establishes many of the default rules that govern the relations among partners. All of these rules are, however, subject to contrary agreement of the partners as provided in Section 103.

2. Subsection (a) provides that each partner is deemed to have an account that is credited with the partner's contributions and share of the partnership profits and charged with distributions to the partner and the partner's share of partnership losses. In the absence of another system of partnership accounts, these rules establish a rudimentary system of accounts for the partnership. The rules regarding the settlement of the partners' accounts upon the dissolution and winding up of the partnership business are found in Section 807.

3. Subsection (b) establishes the default rules for the sharing of partnership profits and losses. The UPA Section 18(a) rules that profits are shared equally and that losses, whether capital or operating, are shared in proportion to each partner's share of the profits are continued. Thus, under the default rule, partners share profits per capita and not in proportion to capital contribution as do corporate shareholders or partners in limited partnerships. Compare RULPA Section 504. With respect to losses, the qualifying phrase, 'whether capital or operating,' has been deleted as inconsistent with contemporary partnership accounting practice and terminology; no substantive change is intended.

If partners agree to share profits other than equally, losses will be shared similarly to profits, absent agreement to do otherwise. That rule, carried over from the UPA, is predicated on the assumption that partners would likely agree to share losses on the same basis as profits, but may fail to say so. Of course, by agreement, they may share losses

on a different basis from profits.

The default rules apply, as does UPA Section 18(a), where one or more of the partners contribute no capital, although there is case law to the contrary. *See, e.g., Kovacik v. Reed*, 49 Cal. 2d 166, 315 P.2d 314 (1957); *Becker v. Killarney*, 177 Ill. App. 3d 793, 523 N.E.2d 467 (1988). It may seem unfair that the contributor of services, who contributes little or no capital, should be obligated to contribute toward the capital loss of the large contributor who contributed no services. In entering a partnership with such a capital structure, the partners should foresee that application of the default rule may bring about unusual results and take advantage of their power to vary by agreement the allocation of capital losses.

Subsection (b) provides that each partner "is chargeable" with a share of the losses, rather than the UPA formulation that each partner shall "contribute" to losses. Losses are charged to each partner's account as provided in subsection (a)(2). It is intended to make clear that a partner is not obligated to contribute to partnership losses before his withdrawal or the liquidation of the partnership, unless the partners agree otherwise. In effect, unless related to an obligation for which the partner is not personally liable under Section 306(c), a partner's negative account represents a debt to the partnership unless the partners agree to the contrary. Similarly, each partner's share of the profits is credited to his account under subsection (a)(1). Absent an agreement to the contrary, however, a partner does not have a right to receive a current distribution of the profits credited to his account, the interim distribution of profits being a matter arising in the ordinary course of business to be decided by majority vote of the partners.

However, where a liability to contribute at

dissolution and winding up relates to a partnership obligation governed by the limited liability rule of Section 306(c), a partner is not obligated to contribute additional assets even at dissolution and winding up. See Section 807(b). In such a case, although a partner is not personally liable for the partnership obligation, that partner's interest in the partnership remains at risk. See also Comment to Section 401(c) relating to indemnification.

In the case of an operating limited liability partnership, the Section 306 liability shield may be partially eroded where the limited liability partnership incurs both shielded and unshielded liabilities. Where the limited liability partnership uses its assets to pay shielded liabilities before paying unshielded liabilities, each partner's obligation to contribute to the limited liability partnership for that partner's share of the unpaid and unshielded obligations at dissolution and winding up remains intact. The same issue is less likely to occur in the context of the termination of a limited liability partnership since a partner's contribution obligation is based only on that partner's share of unshielded obligations and the partnership will ordinarily use the contributed assets to pay unshielded claims first as they were the basis of the contribution obligations. See Comments to Section 807(b).

4. Subsection (c) is derived from UPA Section 18(b) and provides that the partnership shall reimburse partners for payments made and indemnify them for liabilities incurred in the ordinary course of the partnership's business or for the preservation of its business or property. Reimbursement and indemnification is an obligation of the partnership. Indemnification may create a loss toward which the partners must contribute. Although the right to indemnification is usually enforced in the settlement of accounts among partners upon dissolution and winding up of the partnership business, the right accrues when the liability is incurred and thus may be enforced during the term of the partnership in an appropriate case. See Section 405 and Comment. A partner's right to indemnification under this Act is not affected by the partnership becoming a limited liability partnership. Accordingly, partners continue to share partnership losses to the extent of partnership assets.

5. Subsection (d) is based on UPA Section 18(c). It makes explicit that the partnership must reimburse a partner for an advance of funds beyond the amount of the partner's agreed capital contribution, thereby treating the advance as a loan.

6. Subsection (e), which is also drawn from UPA Section 18(c), characterizes the partnership's obligation under subsection (c) or (d) as a loan to the partnership which accrues inter-

est from the date of the payment or advance. See Section 104(b) (default rate of interest).

7. Under subsection (f), each partner has equal rights in the management and conduct of the business. It is based on UPA Section 18(e), which has been interpreted broadly to mean that, absent contrary agreement, each partner has a continuing right to participate in the management of the partnership and to be informed about the partnership business, even if his assent to partnership business decisions is not required. There are special rules regarding the partner vote necessary to approve a partnership becoming (or canceling its status as) a limited liability partnership. See Section 1001(b).

8. Subsection (g) provides that partners may use or possess partnership property only for partnership purposes. That is the edited remains of UPA Section 25(2)(a), which deals in detail with the incidents of tenancy in partnership. That tenancy is abolished as a consequence of the entity theory of partnerships. See Section 501 and Comments.

9. Subsection (h) continues the UPA Section 18(f) rule that a partner is not entitled to remuneration for services performed, except in winding up the partnership. Subsection (h) deletes the UPA reference to a "surviving" partner. That means any partner winding up the business is entitled to compensation, not just a surviving partner winding up after the death of another partner. The exception is not intended to apply in the hypothetical winding up that takes place if there is a buyout under Article 7.

10. Subsection (i) continues the substance of UPA Section 18(g) that no person can become a partner without the consent of all the partners.

11. Subsection (j) continues with one important clarification the UPA Section 18(h) scheme of allocating management authority among the partners. In the absence of an agreement to the contrary, matters arising in the ordinary course of the business may be decided by a majority of the partners. Amendments to the partnership agreement and matters outside the ordinary course of the partnership business require unanimous consent of the partners. Although the text of the UPA is silent regarding extraordinary matters, courts have generally required the consent of all partners for those matters. See, e.g., *Paciaroni v. Crane*, 408 A.2d 946 (Del. Ch. 1989); *Thomas v. Marvin E. Jewell & Co.*, 232 Neb. 261, 440 N.W.2d 437 (1989); *Duell v. Hancock*, 83 A.D.2d 762, 443 N.Y.S.2d 490 (1981).

It is not intended that subsection (j) embrace a claim for an objection to a partnership decision that is not discovered until after the fact. There is no cause of action based on that after-the-fact second-guessing.

12. Subsection (k) is new and was added to make it clear that Section 301 governs partners' agency power to bind the partnership to

third persons, while Section 401 governs partners' rights among themselves.

53-3-402. Distributions in kind. — A partner has no right to receive, and may not be required to accept, a distribution in kind. [I.C., § 53-3-402, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 402 provides that a partner has no right to demand and receive a distribution in kind and may not be required to take a distribution in kind. That continues the "in kind" rule of UPA Section 38(l). The new language is suggested by RULPA Section 605.

This section is complemented by Section 807(a) which provides that, in winding up the partnership business on dissolution, any surplus after the payment of partnership obligations must be applied to pay in cash the net amount distributable to each partner.

53-3-403. Partner's rights and duties with respect to information. — (a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this act; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances. [I.C., § 53-3-403, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-3-101.

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 1, 122, 294, 396, 669.

C.J.S. — 68 C.J.S., Partnership, § 98 et seq.

OFFICIAL COMMENT

1. Subsection (a) provides that the partnership's books and records, if any, shall be kept

at its chief executive office. It continues the UPA Section 19 rule, modified to include part-

nership records other than its “books,” i.e., financial records. The concept of “chief executive office” comes from UCC Section 9-103(3)(d). See the Comment to Section 106.

Since general partnerships are often informal or even inadvertent, no books and records are enumerated as mandatory, such as that found in RULPA Section 105. Any requirement in UPA Section 19 that the partnership keep books is oblique at best, since it states merely where the books shall be kept, not that they shall be kept. Under RUPA, there is no liability to either partners or third parties for the failure to keep partnership books. A partner who undertakes to keep books, however, must do so accurately and adequately.

In general, a partnership should, at a minimum, keep those books and records necessary to enable the partners to determine their share of the profits and losses, as well as their rights on withdrawal. An action for an accounting provides an adequate remedy in the event adequate records are not kept. The partnership must also maintain any books and records required by state or federal taxing or other governmental authorities.

2. Under subsection (b), partners are entitled to access to the partnership books and records. Former partners are expressly given a similar right, although limited to the books and records pertaining to the period during which they were partners. The line between partners and former partners is not a bright one for this purpose, however, and should be drawn in light of the legitimate interests of a dissociated partner in the partnership. For example, a withdrawing partner's liability is ongoing for pre-withdrawal liabilities and will normally be extended to new liabilities for at least 90 days. It is intended that a former partner be accorded access to partnership books and records as reasonably necessary to protect that partner's legitimate interests during the period his rights and liabilities are being wound down.

The right of access is limited to ordinary business hours, and the right to inspect and copy by agent or attorney is made explicit. The partnership may impose a reasonable charge for furnishing copies of documents. Accord, RULPA § 105(b).

A partner's right to inspect and copy the partnership's books and records is not conditioned on the partner's purpose or motive. Compare RMBCA Section 16.02(c)(1) (shareholder must have proper purpose to inspect certain corporate records). A partner's unlimited personal liability justifies an unqualified right of access to the partnership books and records. An abuse of the right to inspect and copy might constitute a violation of the obligation of good faith and fair dealing for which the other partners would have a remedy. See Sections 404(d) and 405.

Under Section 103(b)(2), a partner's right of access to partnership books and records may not be unreasonably restricted by the partnership agreement. Thus, to preserve a partner's core information rights despite unequal bargaining power, an agreement limiting a partner's right to inspect and copy partnership books and records is subject to judicial review. Nevertheless, reasonable restrictions on access to partnership books and records by agreement are authorized. For example, a provision in a partnership agreement denying partners access to the compensation of other partners should be upheld, absent any abuse such as fraud or duress.

3. Subsection (c) is a significant revision of UPA Section 20 and provides a more comprehensive, although not exclusive, statement of partners' rights and duties with respect to partnership information other than books and records. Both the partnership and the other partners are obligated to furnish partnership information.

Paragraph (1) is new and imposes an affirmative disclosure obligation on the partnership and partners. There is no express UPA provision imposing an affirmative obligation to disclose any information other than the partnership books. Under some circumstances, however, an affirmative disclosure duty has been inferred from other sections of the Act, as well as from the common law, such as the fiduciary duty of good faith. Under UPA Section 18(e), for example, all partners enjoy an equal right in the management and conduct of the partnership business, absent contrary agreement. That right has been construed to require that every partner be provided with ongoing information concerning the partnership business. See Comment 7 to Section 401. Paragraph (1) provides expressly that partners must be furnished, without demand, partnership information reasonably needed for them to exercise their rights and duties as partners. In addition, a disclosure duty may, under some circumstances, also spring from the Section 404(d) obligation of good faith and fair dealing. See Comment 4 to Section 404.

Paragraph (2) continues the UPA rule that partners are entitled, on demand, to any other information concerning the partnership's business and affairs. The demand may be refused if either the demand or the information demanded is unreasonable or otherwise improper. That qualification is new to the statutory formulation. The burden is on the partnership or partner from whom the information is requested to show that the demand is unreasonable or improper. The UPA admonition that the information furnished be “true and full” has been deleted as unnecessary, and no substantive change is intended.

The Section 403(c) information rights can be waived or varied by agreement of the partners, since there is no Section 103(b) limitation on the variation of those rights as there is with respect to the Section 403(b) access rights to books and records. See Section 103(b)(2).

53-3-404. General standards of partner's conduct. — (a) The fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners includes the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, or information including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner related to performance or enforcement are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner. [I.C., § 53-3-404, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-3-101.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accounting during dissolution.
Business judgment rule.

Dissolution.

Fiduciary duties.

Misappropriation of profits.

Unpaid additional wages.

Accounting During Dissolution.

Given the fiduciary duty of a winding-up partner during the winding-up period, it would be reasonable to provide for a right to an accounting measured not by the period of time from the date of dissolution, but rather by a period of time from the date of the last transaction connected with the winding-up process which follows upon dissolution. *Ramseyer v. Ramseyer*, 98 Idaho 47, 558 P.2d 76 (1976).

Where claims of the dominant or managing partner against the partnership are questioned, the managing partner has the burden of proving the claimed expenses, incurred during dissolution, are reasonable and necessary. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Where partnership combines were sold through partners' corporation during winding up, the reasonable costs of repairing combines and a customary ten percent sales commission to corporation were properly charged to the partnership; however, a \$500 finder's fee for the person who found buyer of combine could not be so charged. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Where it was impossible to account for the partnership's profits during a prolonged period of winding-up, the trial court did not err in charging the surviving partners rent and interest for their use of partnership property during the winding-up period. *Murgoitio v. Murgoitio*, 111 Idaho 573, 726 P.2d 685 (1986).

Court's award of prejudgment interest as an alternative to an accounting for profits from the use of partnership assets during prolonged winding up was not improper. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Generally, the only action which will lie between partners regarding partnership business is an action for an accounting; other actions are premature until the business is wound up and accounts are settled, and dissolution alone does not change this rule. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Partners are accountable for profits and benefits derived from the use of partnership assets during the winding-up period. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

The ultimate goal of an accounting is to ascertain the value of a plaintiff's interest in the partnership as of the date of dissolution and then to determine any profits attributable to the use of the plaintiff's right in the property of the dissolved partnership. *Arnold*

v. Burgess, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Where it is impossible to account for a partnership's profits during a long period of winding up, rent and interest may be awarded as an alternative method of sharing the benefits. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Business Judgment Rule.

Defendant/partner was authorized to act as managing partner for construction of ponds in accordance with the terms and conditions of the partnership agreement and although some of defendant's decisions regarding the ponds might not have been the best, they did not constitute a breach of defendant's fiduciary duty to the partnership and defendant's actions were completely covered by the business judgment rule, which was incorporated into the partnership agreement, besides which evidence adduced at trial tended to prove that the other members of the partnership had ratified defendant's conduct; therefore, defendant's conduct did not affect prejudicially the carrying on of the business. *Weaver v. Millard*, 120 Idaho 692, 819 P.2d 110 (Ct. App. 1991).

Dissolution.

Where partnership was dissolved by agreement of two partners to sell their interest to third partner, buyer occupied a fiduciary position in respect to the partnership he was liquidating. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Fiduciary Duties.

The purchase of the partnership's obligation by partner on June 6, and the concealment of it during the June 19 winding up negotiations, was a breach of the fiduciary duties to account and to render full information to the other partners, even if the motive was justifiable. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

Misappropriation of Profits.

The district court's finding that partner had not breached his fiduciary duty to other partners under this section was not clearly erroneous, where there was no evidence that partnership profits had been misappropriated and claim actually involved partner exceeding the construction expenditure authority granted by the partnership. *Weaver v. Millard*, 120 Idaho 692, 819 P.2d 110 (Ct. App. 1991).

Unpaid Additional Wages.

Partner's claim for "unpaid additional wages" was subject to the six-month limita-

tion period expressed in § 45-614, and did not fall under this section or § 53-323 as "remuneration" of partners. *Callenders, Inc. v.*

Beckman, 120 Idaho 169, 814 P.2d 429 (Ct. App. 1991).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 280 et seq.

C.J.S. — 68 C.J.S., Partnership, § 77.

OFFICIAL COMMENT

1. Section 404 is new. The title, "General Standards of Partner's Conduct," is drawn from RMBCA Section 8.30. Section 404 is both comprehensive and exclusive. In that regard, it is structurally different from the UPA which touches only sparingly on a partner's duty of loyalty and leaves any further development of the fiduciary duties of partners to the common law of agency. Compare UPA Sections 4(3) and 21.

Section 404 begins by stating that the only fiduciary duties a partner owes to the partnership and the other partners are the duties of loyalty and care set forth in subsections (b) and (c) of the Act. Those duties may not be waived or eliminated in the partnership agreement, but the agreement may identify activities and determine standards for measuring performance of the duties, if not manifestly unreasonable. See Sections 103(b)(3)-(5).

Section 404 continues the term "fiduciary" from UPA Section 21, which is entitled "Partner Accountable as a Fiduciary." Arguably, the term "fiduciary" is inappropriate when used to describe the duties of a partner because a partner may legitimately pursue self-interest (see Section 404(e)) and not solely the interest of the partnership and the other partners, as must a true trustee. Nevertheless, partners have long been characterized as fiduciaries. See, e.g., *Meinhard v. Salmon*, 249 N.Y. 458, 463, 164 N.E. 545, 546 (1928) (Cardozo, J.). Indeed, the law of partnership reflects the broader law of principal and agent, under which every agent is a fiduciary. See Restatement (Second) of Agency § 13 (1957).

2. Section 404(b) provides three specific rules that comprise a partner's duty of loyalty. Those rules are exclusive and encompass the entire duty of loyalty.

Subsection (b)(1) is based on UPA Section 21(1) and continues the rule that partnership property usurped by a partner, including the misappropriation of a partnership opportunity, is held in trust for the partnership. The express reference to the appropriation of a partnership opportunity is new, but merely codifies case law on the point. See, e.g., *Meinhard v. Salmon*, *supra*; *Fouchek v. Janicek*, 190 Ore. 251, 225 P.2d 783 (1950).

Under a constructive trust theory, the partnership can recover any money or property in the partner's hands that can be traced to the partnership. See, e.g., *Yoder v. Hooper*, 695 P.2d 1182 (Colo. App. 1984), *aff'd*, 737 P.2d 852 (Colo. 1987); *Fortugno v. Hudson Manure Co.*, 51 N.J. Super. 482, 144 A.2d 207 (1958); *Harestad v. Weitzel*, 242 Or. 199, 536 P.2d 522 (1975). As a result, the partnership's claim is greater than that of an ordinary creditor. See Official Comment to UPA Section 21.

UPA Section 21(1) imposes the duty on partners to account for profits and benefits in all transactions connected with "the formation, conduct, or liquidation of the partnership." Reference to the "formation" of the partnership has been eliminated by RUPA because of concern that the duty of loyalty could be inappropriately extended to the pre-formation period when the parties are really negotiating at arm's length. Compare *Herring v. Offutt*, 295 A.2d 876 (Ct. App. Md. 1972), with *Phoenix Mutual Life Ins. Co. v. Shady Grove Plaza Limited Partnership*, 734 F. Supp. 1181 (D. Md. 1990), *aff'd*, 937 F.2d 603 (4th Cir. 1991). Once a partnership is agreed to, each partner becomes a fiduciary in the "conduct" of the business. Pre-formation negotiations are, of course, subject to the general contract obligation to deal honestly and without fraud.

Upon a partner's dissociation, Section 603(b)(3) limits the application of the duty to account for personal profits to those derived from matters arising or events occurring before the dissociation, unless the partner participates in winding up the partnership's business. Thus, after withdrawal, a partner is free to appropriate to his own benefit any new business opportunity thereafter coming to his attention, even if the partnership continues.

Subsection (b)(2) provides that a partner must refrain from dealing with the partnership as or on behalf of a party having an interest adverse to the partnership. This rule is derived from Sections 389 and 391 of the Restatement (Second) of Agency. Comment c to Section 389 explains that the rule is not based upon the harm caused to the principal, but upon avoiding a conflict of opposing interests in the mind of an agent whose duty is to

act for the benefit of his principal.

Upon a partner's dissociation, Section 603(b)(3) limits the application of the duty to refrain from representing interests adverse to the partnership to the same extent as the duty to account. Thus, after withdrawal, a partner may deal with the partnership as an adversary with respect to new matters or events.

Section 404(b)(3) provides that a partner must refrain from competing with the partnership in the conduct of its business. This rule is derived from Section 393 of the Restatement (Second) of Agency and is an application of the general duty of an agent to act solely on his principal's behalf.

The duty not to compete applies only to the "conduct" of the partnership business; it does not extend to winding up the business, as do the other loyalty rules. Thus, a partner is free to compete immediately upon an event of dissolution under Section 801, unless the partnership agreement otherwise provides. A partner who dissociates without a winding up of the business resulting is also free to compete, because Section 603(b)(2) provides that the duty not to compete terminates upon dissociation. A dissociated partner is not, however, free to use confidential partnership information after dissociation. See Restatement (Second) of Agency § 393 cmt. e (1957). Trade secret law also may apply. See the Uniform Trade Secrets Act.

Under Section 103(b)(3), the partnership agreement may not "eliminate" the duty of loyalty. Section 103(b)(3)(i) expressly empowers the partners, however, to identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. As under UPA Section 21, the other partners may also consent to a specific act or transaction that otherwise violates one of the rules. For the consent to be effective under Section 103(b)(3)(ii), there must be full disclosure of all material facts regarding the act or transaction and the partner's conflict of interest. See Comment 5 to Section 103.

3. Subsection (c) is new and establishes the duty of care that partners owe to the partnership and to the other partners. There is no statutory duty of care under the UPA, although a common law duty of care is recognized by some courts. See, e.g., *Rosenthal v. Rosenthal*, 543 A.2d 348, 352 (Me. 1988) (duty of care limited to acting in a manner that does not constitute gross negligence or willful misconduct).

The standard of care imposed by RUPA is that of gross negligence, which is the standard generally recognized by the courts. See, e.g., *Rosenthal v. Rosenthal*, *supra*. Section 103(b)(4) provides that the duty of care may not be eliminated entirely by agreement, but

the standard may be reasonably reduced. See Comment 6 to Section 103.

4. Subsection (d) is also new. It provides that partners have an obligation of good faith and fair dealing in the discharge of all their duties, including those arising under the Act, such as their fiduciary duties of loyalty and care, and those arising under the partnership agreement. The exercise of any rights by a partner is also subject to the obligation of good faith and fair dealing. The obligation runs to the partnership and to the other partners in all matters related to the conduct and winding up of the partnership business.

The obligation of good faith and fair dealing is a contract concept, imposed on the partners because of the consensual nature of a partnership. See Restatement (Second) of Contracts § 205 (1981). It is not characterized, in RUPA, as a fiduciary duty arising out of the partners' special relationship. Nor is it a separate and independent obligation. It is an ancillary obligation that applies whenever a partner discharges a duty or exercises a right under the partnership agreement or the Act.

The meaning of "good faith and fair dealing" is not firmly fixed under present law. "Good faith" clearly suggests a subjective element, while "fair dealing" implies an objective component. It was decided to leave the terms undefined in the Act and allow the courts to develop their meaning based on the experience of real cases. Some commentators, moreover, believe that good faith is more properly understood by what it excludes than by what it includes. See Robert S. Summers, "Good Faith" in *General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 Va. L. Rev. 195, 262 (1968).

Good faith, as judges generally use the term in matters contractual, is best understood as an "excluder" — a phrase with no general meaning or meanings of its own. Instead, it functions to rule out many different forms of bad faith. It is hard to get this point across to persons used to thinking that every word must have one or more general meanings of its own — must be either univocal or ambiguous.

The UCC definition of "good faith" is honesty in fact and, in the case of a merchant, the observance of reasonable commercial standards of fair dealing in the trade. See UCC §§ 1-201(19) [§ 28-1-201(20)], 2-103(b) [§ 28-2-103(1)(b)]. Those definitions were rejected as too narrow or not applicable.

In some situations the obligation of good faith includes a disclosure component. Depending on the circumstances, a partner may have an affirmative disclosure obligation that supplements the Section 403 duty to render information.

Under Section 103(b)(5), the obligation of good faith and fair dealing may not be elimi-

nated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable. See Comment 7 to Section 103.

5. Subsection (e) is new and deals expressly with a very basic issue on which the UPA is silent. A partner as such is not a trustee and is not held to the same standards as a trustee. Subsection (e) makes clear that a partner's conduct is not deemed to be improper merely because it serves the partner's own individual interest.

That admonition has particular application to the duty of loyalty and the obligation of good faith and fair dealing. It underscores the partner's rights as an owner and principal in the enterprise, which must always be balanced against his duties and obligations as an agent and fiduciary. For example, a partner who, with consent, owns a shopping center may, under subsection (e), legitimately vote against a proposal by the partnership to open a competing shopping center.

6. Subsection (f) authorizes partners to lend money to and transact other business with the partnership and, in so doing, to enjoy the same rights and obligations as a nonpartner. That language is drawn from RULPA Section 107. The rights and obligations of a partner doing business with the partnership as an outsider are expressly made subject to the usual laws governing

those transactions. They include, for example, rules limiting or qualifying the rights and remedies of inside creditors, such as fraudulent transfer law, equitable subordination, and the law of avoidable preferences, as well as general debtor-creditor law. The reference to "other applicable law" makes clear that subsection (f) is not intended to displace those laws, and thus they are preserved under Section 104(a).

It is unclear under the UPA whether a partner may, for the partner's own account, purchase the assets of the partnership at a foreclosure sale or upon the liquidation of the partnership. Those purchases are clearly within subsection (f)'s broad approval. It is also clear under that subsection that a partner may purchase partnership assets at a foreclosure sale, whether the partner is the mortgagee or the mortgagee is an unrelated third party. Similarly, a partner may purchase partnership property at a tax sale. The obligation of good faith requires disclosure of the partner's interest in the transaction, however.

7. Subsection (g) provides that the prescribed standards of conduct apply equally to a person engaged in winding up the partnership business as the personal or legal representative of the last surviving partner, as if the person were a partner. This is derived from UPA Section 21(2), but now embraces the duty of care and the obligation of good faith and fair dealing, as well as the duty of loyalty.

53-3-405. Actions by partnership and partners. — (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) Enforce the partner's rights under the partnership agreement;
- (2) Enforce the partner's rights under this act, including:
 - (i) The partner's rights under section 53-3-401, 53-3-403 or 53-3-404, Idaho Code;
 - (ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 53-3-701 or section 53-3-701A, Idaho Code, or enforce any other right under part 6 or 7 of this chapter; or
 - (iii) The partner's right to compel a dissolution and winding up of the partnership business under section 53-3-801, Idaho Code, or enforce any other right under part 8 of this chapter; or
- (3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. [I.C., § 53-3-405, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 53-3-101.

JUDICIAL DECISIONS

Liability.

No accounting of other partnership accounts was necessary before the trial court acted on a partner's claim to recover debts against the debtor since he became liable for

contribution to any of the other makers of the note who paid part of the debtor's share; that liability was not intertwined with other partnership transactions. *Berry v. Ostrom*, 144 Idaho 458, 163 P.3d 247 (Ct. App. 2007).

OFFICIAL COMMENT

1. Section 405(a) is new and reflects the entity theory of partnership. It provides that the partnership itself may maintain an action against a partner for any breach of the partnership agreement or for the violation of any duty owed to the partnership, such as a breach of fiduciary duty.

2. Section 405(b) is the successor to UPA Section 22, but with significant changes. At common law, an accounting was generally not available before dissolution. That was modified by UPA Section 22 which specifies certain circumstances in which an accounting action is available without requiring a partner to dissolve the partnership. Section 405(b) goes far beyond the UPA rule. It provides that, during the term of the partnership, partners may maintain a variety of legal or equitable actions, including an action for an accounting, as well as a final action for an accounting upon dissolution and winding up. It reflects a new policy choice that partners should have access to the courts during the term of the partnership to resolve claims against the partnership and the other partners, leaving broad judicial discretion to fashion appropriate remedies.

Under RUPA, an accounting is not a prerequisite to the availability of the other remedies a partner may have against the partnership or the other partners. That change reflects the increased willingness courts have shown to grant relief without the requirement of an accounting, in derogation of the so-called “exclusivity rule.” See, e.g., *Farney v. Hauser*, 109 Kan. 75, 79, 198 Pac. 178, 180 (1921) (“[For] all practical purposes a partnership may be considered as a business entity”); *Auld v. Estridge*, 86 Misc. 2d 895, 901, 382 N.Y.S.2d 897, 901 (1976) (“No purpose of justice is served by delaying the resolution

here on empty procedural grounds”).

Under subsection (b), a partner may bring a direct suit against the partnership or another partner for almost any cause of action arising out of the conduct of the partnership business. That eliminates the present procedural barriers to suits between partners filed independently of an accounting action. In addition to a formal account, the court may grant any other appropriate legal or equitable remedy. Since general partners are not passive investors like limited partners, RUPA does not authorize derivative actions, as does RULPA Section 1001.

Subsection (b)(3) makes it clear that a partner may recover against the partnership and the other partners for personal injuries or damage to the property of the partner caused by another partner. See, e.g., *Duffy v. Piazza Construction Co.*, 815 P.2d 267 (Wash. App. 1991); *Smith v. Hensley*, 354 S.W.2d 744 (Ky. App.). One partner's negligence is not imputed to bar another partner's action. See, e.g., *Reeves v. Harmon*, 475 P.2d 400 (Okla. 1970); *Eagle Star Ins. Co. v. Bean*, 134 F.2d 755 (9th Cir. 1943) (fire insurance company not subrogated to claim against partners who negligently caused fire that damaged partnership property).

3. Generally, partners may limit or contract away their Section 405 remedies. They may not, however, eliminate entirely the remedies for breach of those duties that are mandatory under Section 103(b). See Comment 1 to Section 103.

4. Section 405(c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law governs the accrual of a cause of action for which subsection (b) provides a remedy. The statute of limitations on such claims is also governed by other law, and claims barred by a

statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA. The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them. Because an accounting is an equitable proceeding, it may also be barred by laches where there is an undue delay in bringing the action. Under general law, the limitations periods may be tolled by a partner's fraud.

5. UPA Section 39 grants ancillary remedies to a person who rescinds his participation in a partnership because it was fraudulently induced, including the right to a lien on surplus partnership property for the amount of that person's interest in the partnership. RUPA has no counterpart provision to UPA Section 39, and leaves it to the general law of rescission to determine the rights of a person fraudulently induced to invest in a partnership. See Section 104(a).

53-3-406. Continuation of partnership beyond definite term or particular undertaking. — (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue. [I.C., § 53-3-406, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Compensation.

Unpaid additional wages.

Compensation.

Evidence sustained finding for plaintiff partner on issue as to whether plaintiff partner was to be paid wages under an oral agreement to continue the partnership after expiration of the written partnership agreement. *Knauss v. Hale*, 64 Idaho 218, 131 P.2d 292 (1942).

Unpaid Additional Wages.

Partner's claim for "unpaid additional wages" was subject to the six-month limitation period expressed in § 45-614, and did not fall under § 53-321 and former § 53-323 as "remuneration" of partners. *Callenders, Inc. v. Beckman*, 120 Idaho 169, 814 P.2d 429 (Ct. App. 1991).

RESEARCH REFERENCES

C.J.S. — 68 C.J.S., Partnership, § 64.

OFFICIAL COMMENT

Section 406 continues UPA Section 23, with no substantive change. Subsection (a) provides that, if a term partnership is continued without an express agreement beyond the expiration of its term or the completion of the undertaking, the partners' rights and duties remain the same as they were, so far as is consistent with a partnership at will.

Subsection (b) provides that if the partner-

ship is continued by the partners without any settlement or liquidation of the business, it is presumed that the partners have agreed not to wind up the business. The presumption is rebuttable. If the partnership is continued under this subsection, there is no dissolution under (2)(iii). As a partnership at will, however, the partnership may be dissolved under (1) at any time.

PART 5. TRANSFEREES AND CREDITORS OF PARTNER

53-3-501. Partner not co-owner of partnership property. — A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily. [I.C., § 53-3-501, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 501 provides that a partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily. Thus, the section abolishes the UPA Section 25(1) concept of tenants in partnership and reflects the adoption of the entity theory. Partnership property is owned by the entity and not by the individual partners. See also Section 203, which provides that property transferred to or otherwise acquired by the partnership is property of the partnership and not of the partners individually.

RUPA also deletes the references in UPA Sections 24 and 25 to a partner's "right in specific partnership property," although those rights are largely defined away by the detailed rules of UPA Section 25 itself. Thus, it is clear that a partner who misappropriates partnership property is guilty of embezzle-

ment the same as a shareholder who misappropriates corporate property.

Adoption of the entity theory also has the effect of protecting partnership property from execution or other process by a partner's personal creditors. That continues the result under UPA Section 25(2)(c). Those creditors may seek a charging order under Section 504 to reach the partner's transferable interest in the partnership.

RUPA does not interfere with a partner's exemption claim in nonpartnership property. As under the UPA, disputes over whether specific property belongs to the partner or to the firm will likely arise in the context of an exemption claim by a partner.

A partner's spouse, heirs, or next of kin are not entitled to allowances or other rights in partnership property. That continues the result under UPA Section 25(2)(e).

53-3-502. Partner's transferable interest in partnership. — The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property. [I.C., § 53-3-502, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 502 continues the UPA Section 26 concept that a partner's only transferable interest in the partnership is the partner's share of profits and losses and right to receive distributions, that is, the partner's financial rights. The term "distribution" is defined in Section 101(3). Compare RULPA Section 101(10) ("partnership interest").

The partner's transferable interest is deemed to be personal property, regardless of the nature of the underlying partnership assets.

Under Section 503(b)(3), a transferee of a partner's transferable interest has standing to seek judicial dissolution of the partnership business.

A partner has other interests in the partnership that may not be transferred, such as the right to participate in the management of the business. Those rights are included in the broader concept of a "partner's interest in the partnership." See Section 101(9)[(11)].

53-3-503. Transfer of partner's transferable interest. — (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under section 53-3-801(6), Idaho Code, a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer. [I.C., § 53-3-503, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Bankruptcy.

Divorced wife.

Final settlement of partnership indebtedness.

Pledge of partnership property.

Bankruptcy.

The debtor in bankruptcy had no authority as a general partner to bind the partnership to an involuntary bankruptcy petition; as a result of the debtor's individual bankruptcy petition, the non-bankrupt partner had the right to wind up the partnership affairs, and the debtor was entitled to the value of his interest in the partnership. *In re Sunset Developers*, 69 Bankr. 710 (Bankr. D. Idaho 1987).

Divorced Wife.

Where divorced wife of withdrawing partner was granted his interest in farming partnership by divorce decree, she did not thereby become a partner; she became, in effect, his assignee, the successor in interest of her husband's interest in the assets of the partner-

ship, subject to dissolution and the payment of its existing obligations. *Elliot v. Elliot*, 88 Idaho 81, 396 P.2d 719 (1964).

Final Settlement of Partnership Indebtedness.

When one partner purchases the interest of the other, the transaction presumptively includes a final settlement of all partnership indebtedness existing between the partners. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

Pledge of Partnership Property.

Transaction, by which partnership pledged its assets in form of bonds, and two partners without consent of the other sold their interest in bonds to pledgee, amounted to sale of partnership profits and did not make pledgee

a partner nor dissolve partnership. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 260 et seq.

C.J.S. — 68 C.J.S., Partnership, § 224.

A.L.R. — Ademption of legacy of business or interest therein. 65 A.L.R.3d 541.

OFFICIAL COMMENT

1. Section 503 is derived from UPA Section 27. Subsection (a)(1) states explicitly that a partner has the right to transfer his transferable interest in the partnership. The term “transfer” is used throughout RUPA in lieu of the term “assignment.” See Section 101(10)[(11)].

Subsection (a)(2) continues the UPA Section 27(1) rule that an assignment of a partner’s interest in the partnership does not of itself cause a winding up of the partnership business. Under Section 601(4)(ii), however, a partner who has transferred substantially all of his partnership interest may be expelled by the other partners.

Subsection (a)(3), which is also derived from UPA Section 27(l), provides that a transferee is not, as against the other partners, entitled (i) to participate in the management or conduct of the partnership business; (ii) to inspect the partnership books or records; or (iii) to require any information concerning or an account of partnership transactions.

2. The rights of a transferee are set forth in subsection (b). Under subsection (b)(1), which is derived from UPA Section 27(l), a transferee is entitled to receive, in accordance with the terms of the assignment, any distributions to which the transferor would otherwise have been entitled under the partnership agreement before dissolution. After dissolution, the transferee is also entitled to receive, under subsection (b)(2), the net amount that would otherwise have been distributed to the transferor upon the winding up of the business.

Subsection (b)(3) confers standing on a transferee to seek a judicial dissolution and winding up of the partnership business as provided in Section 801(6), thus continuing the rule of UPA Section 32(2).

Section 504(b) accords the rights of a transferee to the purchaser at a sale foreclosing a charging order. The same rule should apply to creditors or other purchasers who acquire partnership interests by pursuing UCC remedies or statutory liens under federal or state law.

3. Subsection (c) is based on UPA Section 27(2). It grants to transferees the right to an account of partnership transactions, limited

to the period since the date of the last account agreed to by all of the partners.

4. Subsection (d) is new. It makes clear that unless otherwise agreed the partner whose interest is transferred retains all of the rights and duties of a partner, other than the right to receive distributions. That means the transferor is entitled to participate in the management of the partnership and remains personally liable for all partnership obligations, unless and until he withdraws as a partner, is expelled under Section 601(4)(ii), or is otherwise dissociated under Section 601.

A divorced spouse of a partner who is awarded rights in the partner’s partnership interest as part of a property settlement is entitled only to the rights of a transferee. The spouse may instead be granted a money judgment in the amount of the property award, enforceable by a charging order in the same manner as any other money judgment against a partner. In neither case, however, would the spouse become a partner by virtue of the property settlement or succeed to any of the partner’s management rights. *See, e.g., Warren v. Warren*, 12 Ark. App. 260, 675 S.W.2d 371 (1984).

5. Subsection (e) is new and provides that the partnership has no duty to give effect to the transferee’s rights until the partnership receives notice of the transfer. This is consistent with UCC Section 9-318(3), which provides that an “account debtor” is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. It further provides that the assignee, on request, must furnish reasonable proof of the assignment.

6. Subsection (f) is new and provides that a transfer of a partner’s transferable interest in the partnership in violation of a restriction on transfer contained in a partnership agreement is ineffective as to a person with timely notice of the restriction. Under Section 103(a), the partners may agree among themselves to restrict the right to transfer their partnership interests. Subsection (f) makes explicit that a transfer in violation of such a restriction is ineffective as to a transferee with notice of the restriction. See Section 102(b) for the mean-

ing of "notice." RUPA leaves to general law and the UCC the issue of whether a transfer in violation of a valid restriction is effective as to a transferee without notice of the restriction.

Whether a particular restriction will be enforceable, however, must be considered in light of other law. See 11 U.S.C. § 541(c)(1) (property owned by bankrupt passes to trustee regardless of restrictions on transfer); UCC § 9-318(4) (agreement between account debtor and assignor prohibiting creation of security interest in a general intangible or requiring account debtor's consent is ineffective); *Battista v. Carlo*, 57 Misc. 2d 495, 293 N.Y.S.2d 227 (1968) (restriction on transfer of partnership interest subject to rules against unreasonable restraints on alienation of property) (dictum); *Tupper v. Kroc*, 88 Nev. 146, 494 P.2d 1275 (1972) (partnership interest

subject to charging order even if partnership agreement prohibits assignments). Cf. *Tu-Vu Drive-In Corp. v. Ashkins*, 61 Cal. 2d 283, 38 Cal. Rptr. 348, 391 P.2d 828 (1964) (restraints on transfer of corporate stock must be reasonable). Even if a restriction on the transfer of a partner's transferable interest in a partnership were held to be unenforceable, the transfer might be grounds for expelling the partner-transferee from the partnership under Section 601(5)(ii).

7. Other rules that apply in the case of transfers include Section 601(4)(ii) (expulsion of partner who transfers substantially all of partnership interest); Section 601(6) (dissociation of partner who makes an assignment for benefit of creditors); and Section 801(6) (transferee has standing to seek judicial winding up).

53-3-504. Partner's transferable interest subject to charging order. — (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one (1) or more of the other partners; or

(3) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership. [I.C., § 53-3-504, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-3-101.

OFFICIAL COMMENT

1. Section 504 continues the UPA Section 28 charging order as the proper remedy by which

a judgment creditor of a partner may reach the debtor's transferable interest in a part-

nership to satisfy the judgment. Subsection (a) makes the charging order available to the judgment creditor of a transferee of a partnership interest. Under Section 503(b), the transferable interest of a partner or transferee is limited to the partner's right to receive distributions from the partnership and to seek judicial liquidation of the partnership. The court may appoint a receiver of the debtor's share of the distributions due or to become due and make all other orders that may be required.

2. Subsection (b) is new and codifies the case law under the UPA holding that a charging order constitutes a lien on the debtor's transferable interest. The lien may be foreclosed by the court at any time, and the purchaser at the foreclosure sale has the Section 503(b) rights of a transferee. For a general discussion of the charging order remedy, see *I Alan R. Bromberg & Larry E. Ribstein, Partnership* (1988), at 3:69.

3. Subsection (c) continues the UPA Section 28(2) right of the debtor or other partners to redeem the partnership interest before the foreclosure sale. Redemption by the partnership (i.e., with partnership property) requires the consent of all the remaining partners. Neither the UPA nor RUPA provide a statutory procedural framework for the redemption.

4. Subsection (d) provides that nothing in RUPA deprives a partner of his rights under

the State's exemption laws. That is essentially the same as UPA Section 28(3).

5. Subsection (e) provides that the charging order is the judgment creditor's exclusive remedy. Although the UPA nowhere states that a charging order is the exclusive process for a partner's individual judgment creditor, the courts have generally so interpreted it. See, e.g., *Matter of Pischke*, 11 B.R. 913 (E.D. Va. 1981); *Baum v. Baum*, 51 Cal. 2d 610, 335 P.2d 481 (1959); *Atlantic Mobile Homes, Inc. v. LeFever*, 481 So. 2d 1002 (Fla. App. 1986).

Notwithstanding subsection (e), there may be an exception for the enforcement of family support orders. Some States have unique statutory procedures for the enforcement of support orders. In Florida, for example, a court may issue an "income deduction order" requiring any person or entity providing "income" to the obligor of a support order to remit to the obligee or a depository, as directed by the court, a specified portion of the income. Fla. Stat. § 61.1301 (1993). "Income" is broadly defined to include any form of payment to the obligor, including wages, salary, compensation as an independent contractor, dividends, interest, or other payment, regardless of source. Fla. Stat. § 61.046(4) (1993). That definition includes distributions payable to an obligor partner. A charging order under RUPA would still be necessary to reach the obligor's entire partnership interest, however.

PART 6. PARTNER'S DISSOCIATION

53-3-601. Events causing partner's dissociation. — A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

(i) It is unlawful to carry on the partnership business with that partner;

(ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) Within ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

- (iv) A partnership, limited partnership or limited liability company that is a partner has been dissolved and its business is being wound up;
- (5) On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:
 - (i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 53-3-404, Idaho Code; or
 - (iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) The partner's action or failure to act in any of the following instances:
 - (i) Becoming a debtor in bankruptcy;
 - (ii) Executing an assignment for the benefit of creditors;
 - (iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - (iv) Failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a partner who is an individual, by any of the following:
 - (i) The partner's death;
 - (ii) The appointment of a guardian or general conservator for the partner; or
 - (iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
- (10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate. [I.C., § 53-3-601, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

1. RUPA dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, "dissociation," is used in lieu of the UPA term "dissolution" to denote the change in the relationship caused by a partner's ceasing to be associated in the

carrying on of the business. "Dissolution" is retained but with a different meaning. See Section 802. The entity theory of partnership provides a conceptual basis for continuing the firm itself despite a partner's withdrawal from the firm.

Under RUPA, unlike the UPA, the dissociation of a partner does not necessarily cause a dissolution and winding up of the business of the partnership. Section 801 identifies the situations in which the dissociation of a partner causes a winding up of the business. Section 701 provides that in all other situations there is a buyout of the partner's interest in the partnership, rather than a windup of the partnership business. In those other situations, the partnership entity continues, unaffected by the partner's dissociation.

A dissociated partner remains a partner for some purposes and still has some residual rights, duties, powers, and liabilities. Although Section 601 determines when a partner is dissociated from the partnership, the consequences of the partner's dissociation do not all occur at the same time. Thus, it is more useful to think of a dissociated partner as a partner for some purposes, but as a former partner for others. For example, see Section 403(b) (former partner's access to partnership books and records). The consequences of a partner's dissociation depend on whether the partnership continues or is wound up, as provided in Articles 6, 7, and 8.

Section 601 enumerates all of the events that cause a partner's dissociation. Section 601 is similar in approach to RULPA Section 402, which lists the events resulting in a general partner's withdrawal from a limited partnership.

2. Section 601(1) provides that a partner is dissociated when the partnership has notice of the partner's express will to withdraw as a partner, unless a later date is specified by the partner. If a future date is specified by the partner, other partners may dissociate before that date; specifying a future date does not bind the others to remain as partners until that date. See also Section 801(2)(i).

Section 602(a) provides that a partner has the power to withdraw at any time. The power to withdraw is immutable under Section 103(b)(6), with the exception that the partners may agree the notice must be in writing. This continues the present rule that a partner has the power to withdraw at will, even if not the right. See UPA Section 31(2). Since no writing is required to create a partner relationship, it was felt unnecessarily formalistic, and a trap for the unwary, to require a writing to end one. If a written notification is given, Section 102(d) clarifies when it is deemed received.

RUPA continues the UPA "express will" concept, thus preserving existing case law. Section 601(1) clarifies existing law by providing that the partnership must have notice of the partner's expression of will before the dissociation is effective. See Section 102(b) for the meaning of "notice."

3. Section 601(2) provides expressly that a

partner is dissociated upon an event agreed to in the partnership agreement as causing dissociation. There is no such provision in the UPA, but that result has been assumed.

4. Section 601(3) provides that a partner may be expelled by the other partners pursuant to a power of expulsion contained in the partnership agreement. That continues the basic rule of UPA Section 31(1)(d). The expulsion can be with or without cause. As under existing law, the obligation of good faith under Section 404(d) does not require prior notice, specification of cause, or an opportunity to be heard. See *Holman v. Coie*, 11 Wash. App. 195, 522 P.2d 515, cert. denied, 420 U.S. 984 (1974).

5. Section 601(4) empowers the partners, by unanimous vote, to expel a partner for specified causes, even if not authorized in the partnership agreement. This changes the UPA Section 31(1)(d) rule that authorizes expulsion only if provided in the partnership agreement. A partner may be expelled from a term partnership, as well as from a partnership at will. Under Section 103(a), the partnership agreement may change or abolish the partners' power of expulsion.

Subsection (4)(i) is derived from UPA Section 31(3). A partner may be expelled if it is unlawful to carry on the business with that partner. Section 801(4), on the other hand, provides that the partnership itself is dissolved and must be wound up if substantially all of the business is unlawful.

Subsection (4)(ii) provides that a partner may be expelled for transferring substantially all of his transferable interest in the partnership, other than as security for a loan. (He may, however, be expelled upon foreclosure.) This rule is derived from UPA Section 31(1)(c). To avoid the presence of an unwelcome transferee, the remaining partners may dissolve the partnership under Section 801(2)(ii), after first expelling the transferor partner. A transfer of a partner's entire interest may, in some circumstances, evidence the transferor's intention to withdraw under Section 601(1).

Subsection (4)(iii) provides for the expulsion of a corporate partner if it has filed a certificate of dissolution, its charter has been revoked, or its right to conduct business has been suspended, unless cured within 90 days after notice. This provision is derived from RULPA Section 402(9). The cure proviso is important because charter revocation is very common in some States and partner status should not end merely because of a technical noncompliance with corporate law that can easily be cured. Withdrawal of a voluntarily filed notice of dissolution constitutes a cure.

Subsection (4)(iv) is the partnership analogue of paragraph (iii) and is suggested by RULPA Section 402(8). It provides that a

partnership that is a partner may be expelled if it has been dissolved and its business is being wound up. It is intended that the right of expulsion not be triggered solely by the dissolution event, but only upon commencement of the liquidation process.

6. Section 601(5) empowers a court to expel a partner if it determines that the partner has engaged in specified misconduct. The enumerated grounds for judicial expulsion are based on the UPA Section 32(1) grounds for judicial dissolution. The application for expulsion may be brought by the partnership or any partner. The phrase "judicial determination" is intended to include an arbitration award, as well as any final court order or decree.

Subsection (5)(i) provides for the partner's expulsion if the court finds that the partner has engaged in wrongful conduct that adversely and materially affected the partnership business. That language is derived from UPA Section 32(1)(c).

Subsection (5)(ii) provides for expulsion if the court determines that the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or to the other partners under Section 404. That would include a partner's breach of fiduciary duty. Paragraph (ii), together with paragraph (iii), carry forward the substance of UPA Section 32(1)(d).

Subsection (5)(iii) provides for judicial expulsion of a partner who engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner. Expulsion for such misconduct makes the partner's dissociation wrongful under Section 602(a)(ii) and may also support a judicial decree of dissolution under Section 801(5)(ii).

7. Section 601(6) provides that a partner is dissociated upon becoming a debtor in bankruptcy or upon taking or suffering other action evidencing the partner's insolvency or lack of financial responsibility.

Subsection (6)(i) is derived from UPA Section 31(5), which provides for dissolution upon a partner's bankruptcy. Accord RULPA § 402(4)(ii). There is some doubt as to whether UPA Section 31(1) is limited to so-called "straight bankruptcy" under Chapter 7 or includes other bankruptcy relief, such as Chapter 11. Under RUPA Section 101(2), however, "debtor in bankruptcy" includes a person who files a voluntary petition, or against whom relief is ordered in an involuntary case, under any chapter of the Bankruptcy Code.

Initially, upon the filing of the bankruptcy petition, the debtor partner's transferable interest in the partnership will pass to the bankruptcy trustee as property of the estate under Section 541(a)(1) of the Bankruptcy

Code, notwithstanding any restrictions on transfer provided in the partnership agreement. In most Chapter 7 cases, that will result in the eventual buyout of the partner's interest.

The application of various provisions of the federal Bankruptcy Code to Section 601(6)(i) is unclear. In particular, there is uncertainty as to the validity of UPA Section 31(5), and thus its RUPA counterpart, under Sections 365(e) and 541(c)(1) of the Bankruptcy Code. Those sections generally invalidate so-called ipso facto laws that cause a termination or modification of the debtor's contract or property rights because of the bankruptcy filing. As a consequence, RUPA Section 601(6)(i), which provides for a partner's dissociation by operation of law upon becoming a debtor in bankruptcy, may be invalid under the Supremacy Clause. *See, e.g., In the Matter of Phillips*, 966 F.2d 926 (5th Cir. 1992); *In re Cardinal Industries, Inc.*, 105 B.R. 385 (Bankr. S.D. Ohio 1989), 116 B.R. 964 (Bankr. S.D. Ohio 1990); *In re Corky Foods Corp.*, 85 B.R. 903 (Bankr. S.D. Fla. 1988). *But see, In re Catron*, 158 B.R. 629 (E.D. Va. 1993) (partnership agreement could not be assumed by debtor under Bankruptcy Code § 365(c)(1) because other partners excused by UPA from accepting performance by or rendering performance to party other than debtor and buyout option not invalid ipso facto clause under Code § 365 (e)), *aff'd per curiam*, 25 F.3d 1038 (4th Cir. 1994). RUPA reflects the policy choice, as a matter of state partnership law, that a partner be dissociated upon becoming a debtor in bankruptcy.

Subsection (6)(ii) is new and provides for dissociation upon a general assignment for the benefit of a partner's creditors. The UPA says nothing about an assignment for the benefit of creditors or the appointment of a trustee, receiver, or liquidator. Subsection (6)(iii) and (iv) cover the latter and are based substantially on RULPA Section 402(4) and (5).

8. UPA Section 31(4) provides for the dissolution of a partnership upon the death of any partner, although by agreement the remaining partners may continue the partnership business. RUPA Section 601(7)(i), on the other hand, provides for dissociation upon the death of a partner who is an individual, rather than dissolution of the partnership. That changes existing law, except in those States previously adopting a similar non-uniform provision, such as California, Georgia, and Texas. Normally, under RUPA, the deceased partner's transferable interest in the partnership will pass to his estate and be bought out under Article 7.

Section 601(7)(ii) replaces UPA Section 32(1)(a) and provides for dissociation upon the appointment of a guardian or general

conservator for partner who is an individual. The appointment itself operates as the event of dissociation, and no further order of the court is necessary.

Section 601(7)(iii) is based on UPA Section 32(1)(b) and provides for dissociation upon a judicial determination that an individual partner has in any other way become incapable of performing his duties under the partnership agreement. The intent is to include physical incapacity.

9. Section 601(8) is new and provides for the dissociation of a partner that is a trust, or is acting as a partner by virtue of being a trustee of a trust, upon the distribution by the trust of its entire transferable interest in the partnership, but not merely upon the substitution of a successor trustee. The provision is inspired by RULPA Section 402(7).

10. Section 601(9) is new and provides for the dissociation of a partner that is an estate, or is acting as a partner by virtue of being a personal representative of an estate, upon the distribution of the estate's entire transferable interest in the partnership, but not merely the substitution of a successor personal representative. It is based on RULPA Section 402(10). Under Section 601(7), a partner is dissociated upon death, however, and the estate normally becomes a transferee, not a partner.

11. Section 601(10) is new and provides that a partner that is not an individual, partnership, corporation, trust, or estate is dissociated upon its termination. It is the comparable "death" analogue for other types of entity partners, such as a limited liability company.

53-3-602. Partner's power to dissociate — Wrongful dissociation.

— (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 53-3-601(1), Idaho Code.

(b) A partner's dissociation is wrongful only if any of the following apply:

- (1) It is in breach of an express provision of the partnership agreement; or
- (2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under section 53-3-601(6) through (10), Idaho Code, inclusive, or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under section 53-3-601(5), Idaho Code;

(iii) The partner is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners. [I.C., § 53-3-602, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

Dissociation from Joint Venture.

Partner could not be dissociated from the joint venture and have it continue in business; that portion of the Revised Uniform Partnership Act providing for the continua-

tion of a partnership as a separate legal entity after dissociation of a partner had no application to a joint venture. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

OFFICIAL COMMENT

1. Subsection (a) states explicitly what is implicit in UPA Section 31(2) and RUPA Sec-

tion 601(1) — that a partner has the power to dissociate at any time by expressing a will to

withdraw, even in contravention of the partnership agreement. The phrase “rightfully or wrongfully” reflects the distinction between a partner’s power to withdraw in contravention of the partnership agreement and a partner’s right to do so. In this context, although a partner can not be enjoined from exercising the power to dissociate, the dissociation may be wrongful under subsection (b).

2. Subsection (b) provides that a partner’s dissociation is wrongful only if it results from one of the enumerated events. The significance of a wrongful dissociation is that it may give rise to damages under subsection (c) and, if it results in the dissolution of the partnership, the wrongfully dissociating partner is not entitled to participate in winding up the business under Section 804.

Under subsection (b), a partner’s dissociation is wrongful if (1) it breaches an express provision of the partnership agreement or (2), in a term partnership, before the expiration of the term or the completion of the undertaking (i) the partner voluntarily withdraws by express will, except a withdrawal following another partner’s wrongful dissociation or dissociation by death or otherwise under Section 601(6) through (10); (ii) the partner is expelled for misconduct under Section 601(5); (iii) the partner becomes a debtor in bankruptcy (see Section 101(2)); or (iv) a partner that is an entity (other than a trust or estate) is expelled or otherwise dissociated because its dissolution or termination was willful. Since subsection (b) is merely a default rule, the partnership agreement may eliminate or expand the dissociations that are wrongful or modify the effects of wrongful dissociation.

The exception in subsection (b)(2)(i) is intended to protect a partner’s reactive withdrawal from a term partnership after the premature departure of another partner, such as the partnership’s rainmaker or main supplier of capital, under the same circumstances that may result in the dissolution of the partnership under Section 801(2)(i). Under that section, a term partnership is dissolved 90 days after the bankruptcy, incapacity, death (or similar dissociation of a partner that is an entity), or wrongful dissociation of any partner, unless a majority in interest (see Comment 5(i) to Section 801 for a discussion of the term “majority in interest”) of the remaining partners agree to continue the partnership. Under Section 602(b)(2)(i), a partner’s exercise of the right of withdrawal

by express will under those circumstances is rendered “rightful,” even if the partnership is continued by others, and does not expose the withdrawing partner to damages for wrongful dissociation under Section 602(c).

A partner wishing to withdraw prematurely from a term partnership for any other reason, such as another partner’s misconduct, can avoid being treated as a wrongfully dissociating partner by applying to a court under Section 601(5)(iii) to have the offending partner expelled. Then, the partnership could be dissolved under Section 801(2)(i) or the remaining partners could, by unanimous vote, dissolve the partnership under Section 801(2)(ii).

3. Subsection (c) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. That liability is in addition to any other obligation of the partner to the partnership or to the other partners. For example, the partner would be liable for any damage caused by breach of the partnership agreement or other misconduct. The partnership might also incur substantial expenses resulting from a partner’s premature withdrawal from a term partnership, such as replacing the partner’s expertise or obtaining new financing. The wrongfully dissociating partner would be liable to the partnership for those and all other expenses and damages that are causally related to the wrongful dissociation.

Section 701(c) provides that any damages for wrongful dissociation may be offset against the amount of the buyout price due to the partner under Section 701(a), and Section 701(h) provides that a partner who wrongfully dissociates from a term partnership is not entitled to payment of the buyout price until the term expires.

Under UPA Section 38(2)(c)(II), in addition to an offset for damages, the goodwill value of the partnership is excluded in determining the value of a wrongfully dissociating partner’s partnership interest. Under RUPA, however, unless the partnership’s goodwill is damaged by the wrongful dissociation, the value of the wrongfully dissociating partner’s interest will include any goodwill value of the partnership. If the firm’s goodwill is damaged, the amount of the damages suffered by the partnership and the remaining partners will be offset against the buyout price. See Section 701 and Comments.

53-3-603. Effect of partner’s dissociation. — Upon a partner’s dissociation, all of the following apply:

(a) The partner’s right to participate in the management and conduct of the partnership business terminates.

(b) The partner's duty of loyalty under section 53-3-404(b)(3), Idaho Code, terminates.

(c) The partner's duty of loyalty under section 53-3-404(b)(1) and (2), Idaho Code, and duty of care under section 53-3-404(c), Idaho Code, continue only with regard to matters arising and events occurring before the partner's dissociation. [I.C., § 53-3-603, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

Dissociation from Joint Venture.

Partner could not be dissociated from the joint venture and have it continue in business; that portion of the Revised Uniform Partnership Act providing for the continua-

tion of a partnership as a separate legal entity after dissociation of a partner had no application to a joint venture. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

OFFICIAL COMMENT

1. Section 603(a) is a "switching" provision. It provides that, after a partner's dissociation, the partner's interest in the partnership must be purchased pursuant to the buyout rules in Article 7 unless there is a dissolution and winding up of the partnership business under Article 8. Thus, a partner's dissociation will always result in either a buyout of the dissociated partner's interest or a dissolution and winding up of the business.

By contrast, under the UPA, every partner dissociation results in the dissolution of the partnership, most of which trigger a right to have the business wound up unless the partnership agreement provides otherwise. See UPA § 38. The only exception in which the remaining partners have a statutory right to continue the business is when a partner wrongfully dissolves the partnership in breach of the partnership agreement. See UPA § 38(2)(b).

2. Section 603(b) is new and deals with some of the internal effects of a partner's dissociation. Subsection (b)(1) makes it clear that one of the consequences of a partner's dissociation is the immediate loss of the right to participate in the management of the business, unless it results in a dissolution and

winding up of the business. In that case, Section 804(a) provides that all of the partners who have not wrongfully dissociated may participate in winding up the business.

Subsection (b)(2) and (3) clarify a partner's fiduciary duties upon dissociation. No change from current law is intended. With respect to the duty of loyalty, the Section 404(b)(3) duty not to compete terminates upon dissociation, and the dissociated partner is free immediately to engage in a competitive business, without any further consent. With respect to the partner's remaining loyalty duties under Section 404(b) and duty of care under Section 404(c), a withdrawing partner has a continuing duty after dissociation, but it is limited to matters that arose or events that occurred before the partner dissociated. For example, a partner who leaves a brokerage firm may immediately compete with the firm for new clients, but must exercise care in completing on-going client transactions and must account to the firm for any fees received from the old clients on account of those transactions. As the last clause makes clear, there is no contraction of a dissociated partner's duties under subsection (b)(3) if the partner thereafter participates in the dissolution and winding up the partnership's business.

PART 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

53-3-701. Purchase of dissociated partner's interest. — Except as otherwise provided in section 53-3-701A, Idaho Code:

(a) If a partner is dissociated from a partnership the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 53-3-807(b), Idaho Code, if, on the date of dissociation, the assets of the

partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under section 53-3-602(b), Idaho Code, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 53-3-702, Idaho Code.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by all of the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation;
- (2) The latest available partnership balance sheet and income statement, if any;
- (3) An explanation of how the estimated amount of the payment was calculated; and
- (4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to section 53-3-405(b)(2)(ii), Idaho Code, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this

section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section. [I.C., § 53-3-701, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

No Application to Joint Venture.

District court did not err in holding that the partner could not be dissociated from the joint venture, because a joint venture could not continue in business as a separate legal entity after one joint venturer withdrew, when a joint venture was not an entity separate and apart from the parties composing it, and the

claimant was not entitled to have the partner dissociated from the joint venture and have it continue in business; that portion of the Revised Uniform Partnership Act providing for the continuation of a partnership as a separate legal entity after dissociation of a partner had no application to a joint venture. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

OFFICIAL COMMENT

1. Article 7 is new and provides for the buyout of a dissociated partner's interest in the partnership when the partner's dissociation does not result in a dissolution and winding up of its business under Article 8. See Section 603(a). If there is no dissolution, the remaining partners have a right to continue the business and the dissociated partner has a right to be paid the value of his partnership interest. These rights can, of course, be varied in the partnership agreement. See Section 103. A dissociated partner has a continuing relationship with the partnership and third parties as provided in Sections 603(b), 702, and 703. See also Section 403(b) (former partner's access to partnership books and records).

2. Subsection (a) provides that, if a partner's dissociation does not result in a windup of the business, the partnership shall cause the interest of the dissociating partner to be purchased for a buyout price determined pursuant to subsection (b). The buyout is mandatory. The "cause to be purchased" language is intended to accommodate a purchase by the partnership, one or more of the remaining partners, or a third party.

For federal income tax purposes, a payment

to a partner for his interest can be characterized either as a purchase of the partner's interest or as a liquidating distribution. The two have different tax consequences. RUPA permits either option by providing that the payment may come from either the partnership, some or all of the continuing partners, or a third party purchaser.

3. Subsection (b) provides how the "buyout price" is to be determined. The terms "fair market value" or "fair value" were not used because they are often considered terms of art having a special meaning depending on the context, such as in tax or corporate law. "Buyout price" is a new term. It is intended that the term be developed as an independent concept appropriate to the partnership buyout situation, while drawing on valuation principles developed elsewhere.

Under subsection (b), the buyout price is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of liquidation value or going concern value without the departing partner. Liquidation value is not intended to mean distress sale value. Under general prin-

ciples of valuation, the hypothetical selling price in either case should be the price that a willing and informed buyer would pay a willing and informed seller, with neither being under any compulsion to deal. The notion of a minority discount in determining the buyout price is negated by valuing the business as a going concern. Other discounts, such as for a lack of marketability or the loss of a key partner, may be appropriate, however.

Since the buyout price is based on the value of the business at the time of dissociation, the partnership must pay interest on the amount due from the date of dissociation until payment to compensate the dissociating partner for the use of his interest in the firm. Section 104(b) provides that interest shall be at the legal rate unless otherwise provided in the partnership agreement. The UPA Section 42 option of electing a share of the profits in lieu of interest has been eliminated.

UPA Section 38(2)(c)(II) provides that the good will of the business not be considered in valuing a wrongfully dissociating partner's interest. The forfeiture of good will rule is implicitly rejected by RUPA. See Section 602(c) and Comment 3.

The Section 701 rules are merely default rules. The partners may, in the partnership agreement, fix the method or formula for determining the buyout price and all of the other terms and conditions of the buyout right. Indeed, the very right to a buyout itself may be modified, although a provision providing for a complete forfeiture would probably not be enforceable. See Section 104(a).

4. Subsection (c) provides that the partnership may offset against the buyout price all amounts owing by the dissociated partner to the partnership, whether or not presently due, including any damages for wrongful dissociation under Section 602(c). This has the effect of accelerating payment of amounts not yet due from the departing partner to the partnership, including a long-term loan by the partnership to the dissociated partner. Where appropriate, the amounts not yet due should be discounted to present value. A dissociating partner, on the other hand, is not entitled to an add-on for amounts owing to him by the partnership. Thus, a departing partner who has made a long-term loan to the partnership must wait for repayment, unless the terms of the loan agreement provide for acceleration upon dissociation.

It is not intended that the partnership's right of setoff be construed to limit the amount of the damages for the partner's wrongful dissociation and any other amounts owing to the partnership to the value of the dissociated partner's interest. Those amounts may result in a net sum due to the partnership from the dissociated partner.

5. Subsection (d) follows the UPA Section

38 rule and provides that the partnership must indemnify a dissociated partner against all partnership liabilities, whether incurred before or after the dissociation, except those incurred by the dissociated partner under Section 702.

6. Subsection (e) provides that, if no agreement for the purchase of the dissociated partner's interest is reached within 120 days after the dissociated partner's written demand for payment, the partnership must pay, or cause to be paid, in cash the amount it estimates to be the buyout price, adjusted for any offsets allowed and accrued interest. Thus, the dissociating partner will receive in cash within 120 days of dissociation the undisputed minimum value of the partner's partnership interest. If the dissociated partner claims that the buyout price should be higher, suit may thereafter be brought as provided in subsection (i) to have the amount of the buyout price determined by the court. This is similar to the procedure for determining the value of dissenting shareholders' shares under RMBCA Sections 13.20-13.28.

The "cause to be paid" language of subsection (a) is repeated here to permit either the partnership, one or more of the continuing partners, or a third-party purchaser to tender payment of the estimated amount due.

7. Subsection (f) provides that, when deferred payment is authorized in the case of a wrongfully dissociating partner, a written offer stating the amount the partnership estimates to be the purchase price should be tendered within the 120-day period, even though actual payment of the amount may be deferred, possibly for many years. See Comment 8. The dissociated partner is entitled to know at the time of dissociation what amount the remaining partners think is due, including the estimated amount of any damages allegedly caused by the partner's wrongful dissociation that may be offset against the buyout price.

8. Subsection (g) provides that the payment of the estimated price (or tender of a written offer under subsection (f)) by the partnership must be accompanied by (1) a statement of the partnership's assets and liabilities as of the date of the partner's dissociation; (2) the latest available balance sheet and income statement, if the partnership maintains such financial statements; (3) an explanation of how the estimated amount of the payment was calculated; and (4) a written notice that the payment will be in full satisfaction of the partnership's buyout obligation unless the dissociated partner commences an action to determine the price within 120 days of the notice. Subsection (g) is based in part on the dissenters' rights provisions of RMBCA Section 13.25(b).

Those disclosures should serve to identify

and narrow substantially the items of dispute between the dissociated partner and the partnership over the valuation of the partnership interest. They will also serve to pin down the parties as to their claims of partnership assets and values and as to the existence and amount of all known liabilities. See Comment 4. Lastly, it will force the remaining partners to consider thoughtfully the difficult and important questions as to the appropriate method of valuation under the circumstances, and in particular, whether they should use going concern or liquidation value. Simply getting that information on the record in a timely fashion should increase the likelihood of a negotiated resolution of the parties' differences during the 120-day period within which the dissociated partner must bring suit.

9. Subsection (h) replaces UPA Section 38(2)(c) and provides a somewhat different rule for payment to a partner whose dissociation before the expiration of a definite term or the completion of a particular undertaking is wrongful under Section 602(b). Under subsection (h), a wrongfully dissociating partner is not entitled to receive any portion of the buyout price before the expiration of the term or completion of the undertaking, unless the dissociated partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. In all other cases, there must be an immediate payment in cash.

10. Subsection (i) provides that a dissociated partner may maintain an action against

the partnership to determine the buyout price, any offsets, or other terms of the purchase obligation. The action must be commenced within 120 days after the partnership tenders payment of the amount it estimates to be due or, if deferred payment is authorized, its written offer. This provision creates a 120-day "cooling off" period. It also allows the parties an opportunity to negotiate their differences after disclosure by the partnership of its financial statements and other required information.

If the partnership fails to tender payment of the estimated amount due (or a written offer, if deferred payment is authorized), the dissociated partner has one year after written demand for payment in which to commence suit.

If the parties fail to reach agreement, the court must determine the buyout price of the partner's interest, any offsets, including damages for wrongful dissociation, and the amount of interest accrued. If payment to a wrongfully dissociated partner is deferred, the court may also require security for payment and determine the other terms of the obligation.

Under subsection (i), attorney's fees and other costs may be assessed against any party found to have acted arbitrarily, vexatiously, or not in good faith in connection with the valuation dispute, including the partnership's failure to tender payment of the estimated price or to make the required disclosures. This provision is based in part on RMBCA Section 13.31(b).

53-3-701A. Dissolution within ninety days after dissociation. — If a partnership dissolves under section 53-3-801, Idaho Code, within ninety (90) days after a dissociation, then section 53-3-701, Idaho Code, does not apply to dissociations within the ninety (90) days prior to the dissolution and:

(a) All partners who dissociated within the ninety (90) days prior to the dissolution shall be treated as partners under section 53-3-807, Idaho Code; and

(b) Any damages for wrongful dissociation under section 53-3-602(b), Idaho Code, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be taken into account in determining the amount distributable to the dissociated partner under section 53-3-807, Idaho Code. [I.C., § 53-3-701A, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — There is no corresponding official version of this section in the Uniform Act.

53-3-702. Dissociated partner's power to bind and liability to partnership. — (a) For two (2) years after a partner dissociates, the partnership, including a surviving partnership under part 9 of this chapter (commencing with section 53-3-901, Idaho Code), is bound by an act of the dissociated partner that would have bound the partnership under section 53-3-301, Idaho Code, before dissociation only if at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner;

(2) The other party did not have notice of the partner's dissociation; and

(3) The other party is not deemed to have had knowledge under section 53-3-303(e), Idaho Code, or notice under section 53-3-704(c), Idaho Code.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section. [I.C., § 53-3-702, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

OFFICIAL COMMENT

1. Section 702 deals with a dissociated partner's lingering apparent authority to bind the partnership in ordinary course partnership transactions and the partner's liability to the partnership for any loss caused thereby. It also applies to partners who withdraw incident to a merger under Article 9. See Section 906(e).

A dissociated partner has no actual authority to act for the partnership. See Section 603(b)(1). Nevertheless, in order to protect innocent third parties, Section 702(a) provides that the partnership remains bound, for two years after a partner's dissociation, by that partner's acts that would, before his dissociation, have bound the partnership under Section 301 if, and only if, the other party to the transaction reasonably believed that he was still a partner, did not have notice of the partner's dissociation, and is not deemed to have had knowledge of the dissociation under Section 303(e) or notice thereof under Section 704(c).

Under Section 301, every partner has apparent authority to bind the partnership by any act for carrying on the partnership business in the ordinary course, unless the other party knows that the partner has no actual authority to act for the partnership or has received a notification of the partner's lack of authority. Section 702(a) continues that gen-

eral rule for two years after a partner's dissociation, subject to three modifications.

After a partner's dissociation, the general rule is modified, first, by requiring the other party to show reasonable reliance on the partner's status as a partner. Section 301 has no explicit reliance requirement, although the partnership is bound only if the partner purports to act on its behalf. Thus, the other party will normally be aware of the partnership and presumably the partner's status as such.

The second modification is that, under Section 702(a), the partnership is not bound if the third party has notice of the partner's dissociation, while under the general rule of Section 301 the partnership is bound unless the third party knows of the partner's lack of authority. Under Section 102(b), a person has "notice" of a fact if he knows or has reason to know it exists from all the facts that are known to him or he has received a notification of it. Thus, the partnership may protect itself by sending a notification of the dissociation to a third party, and a third party may, in any event, have a duty to inquire further based on what is known. That provides the partnership with greater protection from the unauthorized acts of a dissociated partner than from those of partners generally.

The third modification of the general appar-

ent authority rule under Section 702(a) involves the effect of a statement of dissociation. Section 704(c) provides that, for the purposes of Sections 702(a)(3) and 703(b)(3), third parties are deemed to have notice of a partner's dissociation 90 days after the filing of a statement of dissociation. Thus, the filing of a statement operates as constructive notice of the dissociated partner's lack of authority after 90 days, conclusively terminating the dissociated partner's Section 702 apparent authority.

With respect to a dissociated partner's authority to transfer partnership real property, Section 303(e) provides that third parties are deemed to have knowledge of a limitation on a partner's authority to transfer real property held in the partnership name upon the proper recording of a statement containing such a limitation. Section 704(b) provides that a statement of dissociation operates as a limitation on the dissociated partner's authority for the purposes of Section 303(e). Thus, a properly recorded statement of dissociation operates as constructive knowledge of a dissociated partner's lack of authority to transfer real property held in the partnership name, effective immediately upon recording.

Under RUPA, therefore, a partnership should notify all known creditors of a partner's dissociation and may, by filing a statement of dissociation, conclusively limit to 90 days a dissociated partner's lingering agency power. Moreover, under Section 703(b), a dissociated partner's lingering liability for post-dissociation partnership liabilities may be limited to 90 days by filing a statement of dissociation. These incentives should encourage both partnerships and dissociating partners to file statements routinely. Those transacting substantial business with partnerships can protect themselves from the risk of dealing with dissociated partners, or relying on their credit, by checking the partnership records at least every 90 days.

2. Section 702(b) is a corollary to subsection (a) and provides that a dissociated partner is liable to the partnership for any loss resulting from an obligation improperly incurred by the partner under subsection (a). In effect, the dissociated partner must indemnify the partnership for any loss, meaning a loss net of any gain from the transaction. The dissociated partner is also personally liable to the third party for the unauthorized obligation.

53-3-703. Dissociated partner's liability to other persons. — (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under part 9 of this chapter, within two (2) years after the partner's dissociation, only if the partner is liable for the obligation under section 53-3-306, Idaho Code, and at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner.

(2) The other party did not have notice of the partner's dissociation.

(3) The other party is not deemed to have had knowledge under section 53-3-303(e), Idaho Code, or notice under section 53-3-704(c), Idaho Code.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. [I.C., § 53-3-703, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 703(a) is based on UPA Section 36(1) and continues the basic rule that the

departure of a partner does not of itself discharge the partner's liability to third parties

for any partnership obligation incurred before dissociation. The word "obligation" is used instead of "liability" and is intended to include broadly both tort and contract liability incurred before dissociation. The second sentence states affirmatively that a dissociating partner is not liable for any partnership obligation incurred after dissociation except as expressly provided in subsection (b).

Section 703(b) is new and deals with the problem of protecting third parties who extend credit to the partnership after a partner's dissociation, believing that he is still a partner. It provides that the dissociated partner remains liable as a partner for transactions entered into by the partnership within two years after departure, if the other party does not have notice of the partner's dissociation and reasonably believes when entering the transaction that the dissociated partner is still a partner. The dissociated partner is not personally liable, however, if the other party is deemed to know of the dissociation under Section 303(e) or to have notice thereof under Section 704(c). Also, a dissociated partner is not personally liable for limited liability partnership obligations for which the partner is not personally liable under Section 306.

Section 703(b) operates similarly to Section 702(a) in that it requires reliance on the departed partner's continued partnership status, as well as lack of notice. Under Section 704(c), a statement of dissociation operates conclusively as constructive notice 90 days after filing for the purposes of Section 703(b)(3) and, under Section 704(b), as constructive knowledge when recorded for the

purposes of Section 303(d) and (e).

Section 703(c) continues the rule of UPA Section 36(2) that a departing partner can bargain for a contractual release from personal liability for a partnership obligation, but it requires the consent of both the creditor and the remaining partners.

Section 703(d) continues the rule of UPA Section 36(3) that a dissociated partner is released from liability for a partnership obligation if the creditor, with notice of the partner's departure, agrees to a material alteration in the nature or time of payment, without that partner's consent. This rule covers all partner dissociations and is not limited, as is the UPA rule, to situations in which a third party "agrees to assume the existing obligations of a dissolved partnership."

In general under RUPA, as a result of the adoption of the entity theory, relationships between a partnership and its creditors are not affected by the dissociation of a partner or by the addition of a new partner, unless otherwise agreed. Therefore, there is no need under RUPA, as there is under the UPA, for an elaborate provision deeming the new partnership to assume the liabilities of the old partnership. See UPA Section 41.

The "dual priority" rule in UPA Section 36(4) is eliminated to reflect the abolition of the "jingle rule," providing that separate debts have first claim on separate property, in order to conform to the Bankruptcy Code. See Comment 2 to Section 807. A deceased partner's estate, and thus all of his individual property, remains liable for partnership obligations incurred while he was a partner, however.

53-3-704. Statement of dissociation. — (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section RUPA 53-3-303(d) and (e), Idaho Code.

(c) For the purposes of sections 53-3-702(a)(3) and 53-3-703(b)(3), Idaho Code, a person not a partner is deemed to have notice of the dissociation ninety (90) days after the statement of dissociation is filed. [I.C., § 53-3-704, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 123, § 1, p. 290.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2000, ch. 123 provided that the act shall be in full force and effect on and after July 1, 2000.

OFFICIAL COMMENT

Section 704 is new and provides for a statement of dissociation and its effects. Subsec-

tion (a) authorizes either a dissociated partner or the partnership to file a statement of

dissociation. Like other RUPA filings, the statement of dissociation is voluntary. Both the partnership and the departing partner have an incentive to file, however, and it is anticipated that those filings will become routine upon a partner's dissociation. The execution, filing, and recording of the statement is governed by Section 105.

Filing or recording a statement of dissociation has threefold significance:

(1) It is a statement of limitation on the dissociated partner's authority to the extent provided in Section 303(d) and (e). Under Section 303(d), a filed or recorded limitation on the authority of a partner destroys the conclusive effect of a prior grant of authority to the extent it contradicts the prior grant.

Under Section 303(e), nonpartners are conclusively bound by a limitation on the authority of a partner to transfer real property held in the partnership name, if the statement is properly recorded in the real property records.

(2) Ninety days after the statement is filed, nonpartners are deemed to have notice of the dissociation and thus conclusively bound for purposes of cutting off the partner's apparent authority under Sections 301 and 702(a)(3).

(3) Ninety days after the statement is filed, third parties are conclusively bound for purposes of cutting off the dissociated partner's continuing liability under Section 703(b)(3) for transactions entered into by the partnership after dissociation.

53-3-705. Continued use of partnership name. — Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business. [I.C., § 53-3-705, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 705 is an edited version of UPA Section 41(10) and provides that a dissociated partner is not liable for the debts of the continuing business simply because of contin-

ued use of the partnership name or the dissociated partner's name as a part thereof. That prevents forcing the business to forego the good will associated with its name.

PART 8. WINDING UP PARTNERSHIP BUSINESS

53-3-801. Events causing dissolution and winding up of partnership business. — A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, by the express will to dissolve and wind up the partnership business of at least half of the partners, including partners, other than wrongfully dissociating partners, who have dissociated within the preceding ninety (90) days and for which purpose a dissociation under section 53-3-601(1), Idaho Code, constitutes an expression of that partner's will to dissolve and wind up.

(2) In a partnership for a definite term or particular undertaking, when any of the following occurs:

(i) After the expiration of ninety (90) days after a partner's dissociation by death or otherwise under section 53-3-601(6) through (10), Idaho Code, or a partner's wrongful dissociation under section 53-3-602(b), Idaho Code, unless before that time a majority in interest of the partners, including partners who have rightfully dissociated pursuant to section 53-3-602(b)(2)(i), Idaho Code, agree to continue the partnership.

(ii) The express will of all of the partners to wind up the partnership business.

(iii) The expiration of the term or the completion of the undertaking.

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

(5) On application by a partner, a judicial determination that any of the following apply:

(i) The economic purpose of the partnership is likely to be unreasonably frustrated.

(ii) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

(iii) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer. [I.C., § 53-3-801, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

No Application to Joint Venture.

District court did not err in holding that the partner could not be dissociated from the joint venture, because a joint venture could not continue in business as a separate legal entity after one joint venturer withdrew, when a joint venture was not an entity separate and apart from the parties composing it, and the

claimant was not entitled to have the partner dissociated from the joint venture and have it continue in business; that portion of the Revised Uniform Partnership Act providing for the continuation of a partnership as a separate legal entity after dissociation of a partner had no application to a joint venture. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316 (2008).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Bankruptcy.

Exchange of assets.

Time of dissolution.

Withdrawal.

Bankruptcy.

The debtor in bankruptcy had no authority as a general partner to bind the partnership to an involuntary bankruptcy petition; as a result of the debtor's individual bankruptcy petition, the non-bankrupt partner had the right to wind up the partnership affairs, and the debtor was entitled to the value of his interest in the partnership. In *re Sunset Developers*, 69 Bankr. 710 (Bankr. D. Idaho 1987).

Exchange of Assets.

Where partnership assets were exchanged and former partners ceased to be associated

in the carrying on of the business, the partnership was dissolved. *Ramseyer v. Ramseyer*, 98 Idaho 47, 558 P.2d 76 (1976).

Time of Dissolution.

Where partners in company entered into contract dissolving the partnership, under which contract one partner would purchase the other partners' interest in the real property owned by the partnership as appraised at "present market value," the term "present market value" referred to the value at the time of the contract, not at the time of appraisal since, as of the date of the contract, the parties were changing their former busi-

ness relationship so that dissolution occurred at that time. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Withdrawal.

A farming partnership, conducted under an

oral agreement, was dissolved by the withdrawal of one partner. *Elliot v. Elliot*, 88 Idaho 81, 396 P.2d 719 (1964).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 550 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 302, 307-317.

A.L.R. — Court-ordered dissolution, inability to operate at a profit as justification for. 44 A.L.R.4th 122.

OFFICIAL COMMENT

1. Under UPA Section 29, a partnership is dissolved every time a partner leaves. That reflects the aggregate nature of the partnership under the UPA. Even if the business of the partnership is continued by some of the partners, it is technically a new partnership. The dissolution of the old partnership and creation of a new partnership causes many unnecessary problems.

Under RULPA, limited partnerships dissolve far less readily than do general partnerships under the UPA. A limited partnership does not dissolve on the withdrawal of a limited partner, nor does it necessarily dissolve on the withdrawal of a general partner. See RULPA § 801(4).

RUPA's move to the entity theory is driven in part by the need to prevent a technical dissolution or its consequences. Under RUPA, not every partner dissociation causes a dissolution of the partnership. Only certain departures trigger a dissolution. The basic rule is that a partnership is dissolved, and its business must be wound up, only upon the occurrence of one of the events listed in Section 801. All other dissociations result in a buyout of the partner's interest under Article 7 and a continuation of the partnership entity and business by the remaining partners. See Section 603(a).

With only three exceptions, the provisions of Section 801 are merely default rules and may by agreement be varied or eliminated as grounds for dissolution. The first exception is dissolution under Section 801(4) resulting from carrying on an illegal business. The other two exceptions cover the power of a court to dissolve a partnership under Section 801(5) on application of a partner and under Section 801(6) on application of a transferee. See Comments 6-8 for further explanation of these provisions.

2. Under RUPA, "dissolution" is merely the commencement of the winding up process. The partnership continues for the limited purpose of winding up the business. In effect, that means the scope of the partnership busi-

ness contracts to completing work in process and taking such other actions as may be necessary to wind up the business. Winding up the partnership business entails selling its assets, paying its debts, and distributing the net balance, if any, to the partners in cash according to their interests. The partnership entity continues, and the partners are associated in the winding up of the business until winding up is completed. When the winding up is completed, the partnership entity terminates.

3. Section 801 continues two basic rules from the UPA. First, it continues the rule that any member of an at-will partnership has the right to force a liquidation. Second, by negative implication, it continues the rule that the partners who wish to continue the business of a term partnership can not be forced to liquidate the business by a partner who withdraws prematurely in violation of the partnership agreement.

Those rules are gleaned from the separate UPA provisions governing dissolution and its consequences. Under UPA Section 31(1)(b), dissolution is caused by the express will of any partner when no definite term or particular undertaking is specified. UPA Section 38(1) provides that upon dissolution any partner has the right to have the business wound up. That is a default rule and applies only in the absence of an agreement affording the other partners a right to continue the business.

UPA Section 31(2) provides that a term partnership may be dissolved at any time, in contravention of the partnership agreement, by the express will of any partner. In that case, however, UPA Section 38(2)(b) provides that the nonbreaching partners may by unanimous consent continue the business. If the business is continued, they must buy out the breaching partner.

4. Section 801(1) provides that a partnership at will is dissolved and its business must be wound up upon the partnership's having notice of a partner's express will to withdraw

as a partner, unless a later effective date is specified by the partner. A partner at will who has already been dissociated in some other manner, such as a partner who has been expelled, does not thereafter have a right to cause the partnership to be dissolved and its business wound up.

If, after dissolution, none of the partners wants the partnership wound up, Section 802(b) provides that, with the consent of all the partners, including the withdrawing partner, the remaining partners may continue the business. In that event, although there is a technical dissolution of the partnership and, at least in theory, a temporary contraction of the scope of the business, the partnership entity continues and the scope of its business is restored. See Section 802(b) and Comment 2.

5. Section 801(2) provides three ways in which a term partnership may be dissolved before the expiration of the term:

(i) Subsection (2)(i) provides for dissolution after a partner's dissociation by death or otherwise under Section 601(6) to (10) or wrongful dissociation under Section 602(b), if within 90 days after the dissociation at least half of the remaining partners express their will to dissolve the partnership. Thus if a term partnership had six partners and one of the partners dies or wrongfully dissociates before the end of the term, the partnership will, as a result of the dissociation, be dissolved only if three of the remaining five partners affirmatively vote in favor of dissolution within 90 days after the dissociation.¹ This reactive dissolution of a term partnership protects the remaining partners where the dissociating partner is crucial to the successful continuation of the business. The corresponding UPA Section 38(2)(b) rule requires unanimous consent of the remaining partners to continue the business, thus giving each partner an absolute right to a reactive liquidation. Under UPA 1994, if the partnership is continued by the majority, any dissenting partner who wants to withdraw may do so rightfully under the exception to Section 602(b)(2)(i), in which case his interest in the partnership will be bought out under Article 7. By itself, however, a partner's vote not to continue the business is not necessarily an

expression of the partner's will to withdraw, and a dissenting partner may still elect to remain a partner and continue in the business.

The Section 601 dissociations giving rise to a reactive dissolution are: (6) a partner's bankruptcy or similar financial impairment; (7) a partner's death or incapacity; (8) the distribution by a trust-partner of its entire partnership interest; (9) the distribution by an estate-partner of its entire partnership interest; and (10) the termination of an entity-partner. Any dissociation during the term of the partnership that is wrongful under Section 602(b), including a partner's voluntary withdrawal, expulsion or bankruptcy, also gives rise to a reactive dissolution. Those statutory grounds may be varied by agreement or the reactive dissolution may be abolished entirely.

Under Section 601(6)(i), a partner is dissociated upon becoming a debtor in bankruptcy. The bankruptcy of a partner or of the partnership is not, however, an event of dissolution under Section 801. That is a change from UPA Section 31(5). A partner's bankruptcy does, however, cause dissolution of a term partnership under Section 801(2)(i), unless a majority in interest of the remaining partners thereafter agree to continue the partnership. Affording the other partners the option of buying out the bankrupt partner's interest avoids the necessity of winding up a term partnership every time a partner becomes a debtor in bankruptcy.

Similarly, under Section 801(2)(i), the death of any partner will result in the dissolution of a term partnership, only if at least half of the remaining partners express their will to wind up the partnership's business. If dissolution does occur, the deceased partner's transferable interest in the partnership passes to his estate and must be bought out under Article 7. See Comment 8 to Section 601.

(ii) Section 801(2)(ii) provides that a term partnership may be dissolved and wound up at any time by the express will of all the partners. That is merely an expression of the general rule that the partnership agreement may override the statutory default rules and that the partnership agreement, like any contract, can be amended at any time by unanimous consent.

¹Prior to August 1997, Section 801(2)(i) provided that upon the dissociation of a partner in a term partnership by death or otherwise under Section 601(6) through (10) or wrongful dissociation under 602(b) the partnership would dissolve unless "a majority in interest of the remaining partners (including partners who have rightfully dissociated pursuant to Section 602(b)(2)(i) agree to continue the partnership." This language was thought to be necessary for a term partnership to lack continuity of life under the Internal Revenue Act tax classification regulations. These regulations were repealed effective January 1, 1997. The current language, approved at the 1997 annual meeting of the National Conference of Commissioners on Uniform State Laws, allows greater continuity in a term partnership than the prior version of this subsection and UPA Section 38(2)(b).

UPA Section 31(1)(c) provides that a term partnership may be wound up by the express will of all the partners whose transferable interests have not been assigned or charged for a partner's separate debts. That rule reflects the belief that the remaining partners may find transferees very intrusive. This provision has been deleted, however, because the liquidation is easily accomplished under Section 801(2)(ii) by first expelling the transferor partner under Section 601(4)(ii).

(iii) Section 801(2)(iii) is based on UPA Section 31(1)(a) and provides for winding up a term partnership upon the expiration of the term or the completion of the undertaking.

Subsection (2)(iii) must be read in conjunction with Section 406. Under Section 406(a), if the partners continue the business after the expiration of the term or the completion of the undertaking, the partnership will be treated as a partnership at will. Moreover, if the partners continue the business without any settlement or liquidation of the partnership, under Section 406(b) they are presumed to have agreed that the partnership will continue, despite the lack of a formal agreement. The partners may also agree to ratify all acts taken since the end of the partnership's term.

6. Section 801(3) provides for dissolution upon the occurrence of an event specified in the partnership agreement as resulting in the winding up of the partnership business. The partners may, however, agree to continue the business and to ratify all acts taken since dissolution.

7. Section 801(4) continues the basic rule in UPA Section 31(3) and provides for dissolution if it is unlawful to continue the business of the partnership, unless cured. The "all or substantially all" proviso is intended to avoid dissolution for insubstantial or innocent regulatory violations. If the illegality is cured within 90 days after notice to the partnership, it is effective retroactively for purposes of this section. The requirement that an uncured illegal business be wound up cannot be varied in the partnership agreement. See Section 103(b)(8).

8. Section 801(5) provides for judicial dissolution on application by a partner. It is based in part on UPA Section 32(1), and the language comes in part from RUPA Section 802. A court may order a partnership dissolved upon a judicial determination that: (i) the economic purpose of the partnership is likely to be unreasonably frustrated; (ii) another partner has engaged in conduct relating to the partnership business which makes it not

reasonably practicable to carry on the business in partnership with that partner; or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement. The court's power to wind up the partnership under Section 801(5) cannot be varied in the partnership agreement. See Section 103(b)(8).

RUPA deletes UPA Section 32(1)(e) which provides for dissolution when the business can only be carried on at a loss. That provision might result in a dissolution contrary to the partners' expectations in a start-up or tax shelter situation, in which case "book" or "tax" losses do not signify business failure. Truly poor financial performance may justify dissolution under subsection (5)(i) as a frustration of the partnership's economic purpose.

RUPA also deletes UPA Section 32(1)(f) which authorizes a court to order dissolution of a partnership when "other circumstances render a dissolution equitable." That provision was regarded as too open-ended and, given RUPA's expanded remedies for partners, unnecessary. No significant change in result is intended, however, since the interpretation of UPA Section 32(1)(f) is comparable to the specific grounds expressed in subsection (5). See, e.g., *Karber v. Karber*, 145 Ariz. 293, 701 P.2d 1 (Ct. App. 1985) (partnership dissolved on basis of suspicion and ill will, citing UPA §§ 32(1)(d) and (f)); *Fuller v. Brough*, 159 Colo. 147, 411 P.2d 18 (1966) (not equitable to dissolve partnership for trifling causes or temporary grievances that do not render it impracticable to carry on partnership business); *Lau v. Wong*, 1 Haw. App. 217, 616 P.2d 1031 (1980) (partnership dissolved where business operated solely for benefit of managing partner).

9. Section 801(6) provides for judicial dissolution on application by a transferee of a partner's transferable interest in the partnership, including the purchaser of a partner's interest upon foreclosure of a charging order. It is based on UPA Section 32(2) and authorizes dissolution upon a judicial determination that it is equitable to wind up the partnership business (i) after the expiration of the partnership term or completion of the undertaking or (ii) at any time, if the partnership were a partnership at will at the time of the transfer or when the charging order was issued. The requirement that the court determine that it is equitable to wind up the business is new. The rights of a transferee under this section cannot be varied in the partnership agreement. See Section 103(b)(8).

53-3-802. Partnership continues after dissolution. — (a) Subject to subsection (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated

when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event both of the following apply:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

(2) The rights of a third party accruing under section 53-3-804(1), Idaho Code, or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected. [I.C., § 53-3-802, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accounting.

Assets.

Continuation while winding up.

Fiduciary duty of surviving partners.

Time of dissolution.

Accounting.

Generally, the only action which will lie between partners regarding partnership business is an action for an accounting; other actions are premature until the business is wound up and accounts are settled, and dissolution alone does not change this rule. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

The ultimate goal of an accounting is to ascertain the value of a plaintiff's interest in the partnership as of the date of dissolution and then to determine any profits attributable to the use of the plaintiff's right in the property of the dissolved partnership. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Assets.

Where, following dissolution of farming partnership by the withdrawal of one partner, surviving partner refused to wind up partnership affairs, continued the business and refused to account, successive renewals of leases to land were properly held to be assets of the partnership. *Elliot v. Elliot*, 88 Idaho 81, 396 P.2d 719 (1964).

Continuation While Winding Up.

Even if a partnership has been dissolved in fact, for any breach on the part of two of the

three partners, the relationship continued until the affairs of the firm were wound up. *Barron v. Koenig*, 80 Idaho 28, 324 P.2d 388 (1958).

Fiduciary Duty of Surviving Partners.

Surviving partners have a duty to wind up the partnership affairs and, in so doing, a fiduciary duty to disclose all facts pertinent to valuation of a deceased partner's interest, especially when surviving partners seek to purchase such interest. *Spencer v. Spencer*, 91 Idaho 880, 434 P.2d 98 (1967).

Time of Dissolution.

Where partners in company entered into contract dissolving the partnership, under which contract one partner would purchase the other partners' interest in the real property owned by the partnership as appraised at "present market value," the term "present market value" referred to the value at the time of the contract, not at the time of appraisal since, as of the date of the contract, the parties were changing their former business relationship so that dissolution occurred at that time. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 85 et seq., 142, 181.

C.J.S. — 68 C.J.S., Partnership, § 322 et seq.

OFFICIAL COMMENT

1. Section 802(a) is derived from UPA Section 30 and provides that a partnership continues after dissolution only for the purpose of winding up its business, after which it is terminated. RUPA continues the concept of “termination” to mark the completion of the winding up process. Since no filing or other formality is required, the date will often be determined only by hindsight. No legal rights turn on the partnership’s termination or the date thereof. Even after termination, if a previously unknown liability is asserted, all of the partners are still liable.

2. Section 802(b) makes explicit the right of the remaining partners to continue the business after an event of dissolution if all of the partners, including the dissociating partner or partners, waive the right to have the business wound up and the partnership terminated. Only those “dissociating” partners whose dissociation was the immediate cause of the dissolution must waive the right to have the business wound up. The consent of wrongfully dissociating partners is not required.

3. Upon waiver of the right to have the business wound up, Paragraph (1) of the subsection provides that the partnership entity may resume carrying on its business as if dissolution had never occurred, thereby restoring the scope of its business to normal. “Resumes” is intended to mean that acts appropriate to winding up, authorized when taken, are in effect ratified, and the partnership remains liable for those acts, as provided explicitly in paragraph (2).

If the business is continued following a waiver of the right to dissolution, any liability incurred by the partnership or a partner after the dissolution and before the waiver is to be determined as if dissolution had never oc-

curred. That has the effect of validating transactions entered into after dissolution that might not have been appropriate for winding up the business, because, upon waiver, any liability incurred by either the partnership or a partner in those transactions will be determined under Sections 702 and 703, rather than Sections 804 and 806.

As to the liability for those transactions among the partners themselves, the partners by agreement may provide otherwise. Thus, a partner who, after dissolution, incurred an obligation appropriate for winding up, but not appropriate for continuing the business, may protect himself by conditioning his consent to the continuation of the business on the ratification of the transaction by the continuing partners.

Paragraph (2) of the subsection provides that the rights of third parties accruing under Section 804(1) before they knew (or were notified) of the waiver may not be adversely affected by the waiver. That is intended to mean the partnership is bound, notwithstanding a subsequent waiver of dissolution and resumption of its business, by a transaction entered into after dissolution that was appropriate for winding up the partnership business, even if not appropriate for continuing the business. Similarly, any rights of a third party arising out of conduct in reliance on the dissolution are protected, absent knowledge (or notification) of the waiver. Thus, for example, a partnership loan, callable upon dissolution, that has been called is not reinstated by a subsequent waiver. If the loan has not been called before the lender learns (or is notified) of the waiver, however, it may not thereafter be called because of the dissolution. On the other hand, a waiver does not reinstate a lease that is terminated by the dissolution itself.

53-3-803. Right to wind up partnership business. — (a) After dissolution, a partner who has not dissociated may participate in winding up the partnership’s business, but on application of any partner, partner’s legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership’s business.

(c) A person winding up a partnership’s business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or

administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 53-3-807, Idaho Code, settle disputes by mediation or arbitration, and perform other necessary acts. [I.C., § 53-3-803, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accounting.
Dissolution agreement.
Expenses.
Finality of winding up.
Money judgment.

Accounting.

Generally, the only action which will lie between partners regarding partnership business is an action for an accounting; other actions are premature until the business is wound up and accounts are settled, and dissolution alone does not change this rule. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

The ultimate goal of an accounting is to ascertain the value of a plaintiff's interest in the partnership as of the date of dissolution and then to determine any profits attributable to the use of the plaintiff's right in the property of the dissolved partnership. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Dissolution Agreement.

Where the partners mutually agreed that the partnership was to be dissolved, either partner had the right to wind up the partnership affairs in accordance with the agreement. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Expenses.

Where claims of the dominant or managing partner against the partnership are ques-

tioned, the managing partner has the burden of proving the claimed expenses, incurred during dissolution, are reasonable and necessary. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

Finality of Winding Up.

A winding up is presumed to include all disputed matters among the partners and will be final and conclusive upon them in the absence of fraud, mistake or duress. *Ramseyer v. Ramseyer*, 98 Idaho 47, 558 P.2d 76 (1976).

Where partners to a dissolved partnership have agreed upon a settlement and disposition of their partnership accounts, liabilities inter se and obligations to partnership creditors, they have accomplished a winding-up of partnership affairs. *Ramseyer v. Ramseyer*, 98 Idaho 47, 558 P.2d 76 (1976).

Money Judgment.

Under the circumstances, it was not improper for the trial court to enter a money judgment for one partner against the remaining partners where substantial partnership liabilities were still outstanding. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 702 et seq.

C.J.S. — 68 C.J.S., Partnership, §§ 322, 351.

OFFICIAL COMMENT

Section 803(a) is drawn from UPA Section 37. It provides that the partners who have not wrongfully dissociated may participate in winding up the partnership business. Wrongful dissociation is defined in Section 602. On application of any partner, a court may for

good cause judicially supervise the winding up.

Section 803(b) continues the rule of UPA Section 25(2)(d) that the legal representative of the last surviving partner may wind up the business. It makes clear that the representa-

tive of the last surviving partner will not be forced to go to court for authority to wind up the business. On the other hand, the legal representative of a deceased partner, other than the last surviving partner, has only the rights of a transferee of the deceased partner's transferable interest. See Comment 8 to Section 601.

Section 803(c) is new and provides further guidance on the powers of a person who is winding up the business. It is based on Delaware Laws, Title 6, Section 17-803. The powers enumerated are not intended to be exclusive.

Subsection (c) expressly authorizes the preservation of the partnership's business or

property as a going concern for a reasonable time. Some courts have reached that result without benefit of statutory authority. *See, e.g., Paciaroni v. Crane*, 408 A.2d 946 (Del. Ch. 1979). An agreement to continue the partnership business in order to preserve its going-concern value until sale is not a waiver of a partner's right to have the business liquidated.

The authorization of mediation and arbitration implements Conference policy to encourage alternative dispute resolution.

A partner's fiduciary duties of care and loyalty under Section 404 extend to winding up the business, except as modified by Section 603(b).

53-3-804. Partner's power to bind partnership after dissolution.

— Subject to section 53-3-805, Idaho Code, a partnership is bound by a partner's act after dissolution that is either of the following:

- (1) Is appropriate for winding up the partnership business;
- (2) Would have bound the partnership under section 53-3-301, Idaho Code, before dissolution, if the other party to the transaction did not have notice of the dissolution. [I.C., § 53-3-804, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Bankruptcy.
Winding up.
— Expenses.

Bankruptcy.

The debtor in bankruptcy had no authority as a general partner to bind the partnership to an involuntary bankruptcy petition; as a result of the debtor's individual bankruptcy petition, the non-bankrupt partner had the right to wind up the partnership affairs, and the debtor was entitled to the value of his interest in the partnership. *In re Sunset Developers*, 69 Bankr. 710 (Bankr. D. Idaho 1987).

Winding Up.

Where the partners mutually agreed that the partnership was to be dissolved, either

partner had the right to wind up the partnership affairs in accordance with the agreement. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

— Expenses.

Where claims of the dominant or managing partner against the partnership are questioned, the managing partner has the burden of proving the claimed expenses, incurred during dissolution, are reasonable and necessary. *Burnham v. Bray*, 104 Idaho 550, 661 P.2d 335 (Ct. App. 1983).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 588 et seq., 849, 887.	C.J.S. — 68 C.J.S., Partnership, §§ 322-327.
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OFFICIAL COMMENT

Section 804 is the successor to UPA Sections 33(2) and 35, which wind down the authority of partners to bind the partnership to third persons.

Section 804(1) provides that partners have the authority to bind the partnership after dissolution in transactions that are appropriate for winding-up the partnership business. Section 804(2) provides that partners also have the power after dissolution to bind the partnership in transactions that are inconsistent with winding up. The partnership is bound in a transaction not appropriate for winding up, however, only if the partner's act would have bound the partnership under Section 301 before dissolution and the other party to the transaction did not have notice of the dissolution. See Section 102(b) (notice). Compare Section 301(1) (partner has apparent authority unless other party knows or has received a notification of lack of authority).

Section 804(2) attempts to balance the interests of the partners to terminate their mutual agency authority against the interests of outside creditors who have no notice of the partnership's dissolution. Even if the partnership is not bound under Section 804, the faithless partner who purports to act for the partnership after dissolution may be liable individually to an innocent third party under the law of agency. See Section 330 of the Restatement (Second) of Agency (agent liable for misrepresentation of authority), applicable under RUPA as provided in Section 104(a).

RUPA eliminates the special and confusing UPA rules limiting the authority of partners after dissolution. The special protection afforded by UPA Section 35(1)(b)(I) to former creditors and the lesser special protection afforded by UPA Section 35(1)(b)(II) to other parties who knew of the partnership before dissolution are both abolished. RUPA eschews these cumbersome notice provisions in favor of the general apparent authority rules of Section 301, subject to the effect of a filed or recorded statement of dissolution under Section 805. This enhances the protection of innocent third parties and imposes liability on the partnership and the partners who choose their fellow partner-agents and are in the best position to protect others by providing notice of the dissolution.

Also deleted are the special rules for unknown partners in UPA Section 35(2) and for certain causes of dissolution in UPA Section 35(3). Those, too, are inconsistent with RUPA's policy of adhering more closely to the general agency rules of Section 301.

Section 804 should be contrasted with Section 702, which winds down the power of a partner being bought out. The power of a dissociating partner is limited to transactions entered into within two years after the partner's dissociation. Section 804 has no time limitation. However, the apparent authority of partners in both situations is now subject to the filing of a statement of dissociation or dissolution, as the case may be, which operates to cut off such authority after 90 days.

53-3-805. Statement of dissolution. — (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 53-3-303(d), Idaho Code, and is a limitation on authority for the purposes of section 53-3-303(e), Idaho Code.

(c) For the purposes of sections 53-3-301 and 53-3-804, Idaho Code, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety (90) days after it is filed.

(d) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership authority which will operate with respect to a person not a partner as provided in section 53-3-303(d) and (e), Idaho Code, in any transaction, whether or not the transaction is appropriate for winding up the partnership business. [I.C., § 53-3-805, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 123, § 2, p. 290.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2000, ch. 123 provided that the act shall be in full force and effect on and after July 1, 2000.

OFFICIAL COMMENT

1. Section 805 is new. Subsection (a) provides that, after an event of dissolution, any partner who has not wrongfully dissociated may file a statement of dissolution on behalf of the partnership. The filing and recording of a statement of dissolution is optional. The execution, filing, and recording of the statement is governed by Section 105. The legal consequences of filing a statement of dissolution are similar to those of a statement of dissociation under Section 704.

2. Subsection (b) provides that a statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d), thereby terminating any extraordinary grant of authority contained in that statement.

A statement of dissolution also operates as a limitation on authority for the purposes of Section 303(e). That section provides that third parties are deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the statement containing the limitation is recorded with the real estate records. In effect, a properly recorded statement of dissolution restricts the authority of all partners to real property transfers that are appropriate for winding up the business. Thus, third parties must inquire of the partnership whether a contemplated real property transfer is appropriate for winding up. After dissolution, the partnership

may, however, file and record a new statement of authority that will bind the partnership under Section 303(d).

3. Subsection (c) operates in conjunction with Sections 301 and 804 to wind down partners' apparent authority after dissolution. It provides that, for purposes of those sections, 90 days after the filing of a statement of dissolution nonpartners are deemed to have notice of the dissolution and the corresponding limitation on the authority of all partners. Sections 301 and 804 provide that a partner's lack of authority is binding on persons with notice thereof. Thus, after 90 days the statement of dissolution operates as constructive notice conclusively limiting the apparent authority of partners to transactions that are appropriate for winding up the business.

4. Subsection (d) provides that, after filing and, if appropriate, recording a statement of dissolution, the partnership may file and record a new statement of partnership authority that will operate as provided in Section 303(d). A grant of authority contained in that statement is conclusive and may be relied upon by a person who gives value without knowledge to the contrary, whether or not the transaction is appropriate for winding up the partnership business. That makes the partners' record authority conclusive after dissolution, and precludes going behind the record to inquire into whether or not the transaction was appropriate for winding up.

53-3-806. Partner's liability to other partners after dissolution.

— (a) Except as otherwise provided in subsection (b) of this section and section 53-3-306, Idaho Code, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 53-3-804, Idaho Code.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 53-3-804(2), Idaho Code, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability. [I.C., § 53-3-806, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — A section 807 was included in the official version of the Uniform Act, with comments, but no provision corre-

sponding to that section of the Uniform Act was enacted by S.L. 1998, ch. 65. The Official Comments to that section have been omitted.

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, § 592.

C.J.S. — 68 C.J.S., Partnership, § 322.

OFFICIAL COMMENT

Section 806 is the successor to UPA Sections 33(1) and 34, which govern the rights of partners among themselves with respect to post-dissolution liability.

Subsection (a) provides that, except as provided in Section 306(a) and subsection (b), after dissolution each partner is liable to the other partners by way of contribution for his share of any partnership liability incurred under Section 804. That includes not only obligations that are appropriate for winding up the business, but also obligations that are inappropriate if within the partner's apparent authority. Consistent with other provisions of this Act, Section 806(a) makes clear that a partner does not have a contribution obligation with regard to limited liability partnership obligations for which the partner

is not liable under Section 306. See Comments to Section 401(b).

Subsection (a) draws no distinction as to the cause of dissolution. Thus, as among the partners, their liability is treated alike in all events of dissolution. That is a change from UPA Section 33(1).

Subsection (b) creates an exception to the general rule in subsection (a). It provides that a partner, who with knowledge of the winding up nevertheless incurs a liability binding on the partnership by an act that is inappropriate for winding up the business, is liable to the partnership for any loss caused thereby.

Section 806 is merely a default rule and may be varied in the partnership agreement. See Section 103(a).

53-3-807. Settlement of accounts and contributions among partners. — (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 53-3-306, Idaho Code.

(c) If a partner fails to contribute the full amount required under subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 53-3-306, Idaho Code. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 53-3-306, Idaho Code.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 53-3-306, Idaho Code.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership. [I.C., § 53-3-807, as added by 1998, ch. 65, § 2, p. 226.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accounting.
Bankruptcy.
Benefit of loan reduction.
Credits.
Continuance of partnership business.
Credit for expenses paid.
Demand for accounting.
Disposal of partnership property.
Distribution in kind.
Final settlement of partnership indebtedness.
In-kind division of assets.
Liquidation of assets.
Money judgment.
Mutual discharge from liability.
Prior accord and satisfaction.
Purpose.

Accounting.

The decree in an accounting action should provide for a final adjustment of all controverted questions before the trial court with respect to a partnership accounting and distribution. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Bankruptcy.

The debtor in bankruptcy had no authority as a general partner to bind the partnership to an involuntary bankruptcy petition; as a result of the debtor's individual bankruptcy petition, the non-bankrupt partner had the right to wind up the partnership affairs, and the debtor was entitled to the value of his interest in the partnership. *In re Sunset Developers*, 69 Bankr. 710 (Bankr. D. Idaho 1987).

Benefit of Loan Reduction.

Where partners had a negative equity of an amount in excess of \$300,000, and the evidence established that they were obligated to the partnership in the amount of \$627,301 as a consequence of the loan to them which

became the obligation of the partnership by reason of the partnership's guarantee of that loan, the partners were not entitled to the benefit of a reduction of loan negotiated by the partnership after dissolution proceedings. *Kelly v. Silverwood Estates*, 127 Idaho 624, 903 P.2d 1321 (1995).

Credits.

Claim of partner for credit in partnership accounting for expenditures made by partner in looking after affairs of partnership during certain years was properly rejected where partner had kept no account of the expenses and did not specify what they were for. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Claim of partner to credit in partnership accounting for purchase-price of automobile allegedly used in interest of the partnership was properly rejected where evidence failed to establish that purchase of automobile was discussed between partners and to show to what extent automobile was used for partnership purposes. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

In action for partnership accounting, record established that member of partnership was charged with certain amounts which did not come into his possession but which represented duplications of other amounts properly charged against the member, so that member was entitled to a credit for the duplications. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Continuance of Partnership Business.

Where the surviving partners and the administratrix of a deceased partner knew that it was for the best interest for the business to be continued to be operated by the surviving partners, and the administratrix made no demand that the business cease, there was no violation of statute by the administratrix in that she failed to consent to a continuance of the business, or any action on her part that was prejudicial to the surviving partners. *Varkas v. Varkas*, 64 Idaho 297, 130 P.2d 867 (1942).

Credit for Expenses Paid.

Where plaintiff partner had contributed a homestead to the partnership without charge, and the partnership had constructed a reservoir, cistern and other improvements on the homestead for use of the partnership, and plaintiff partner had not agreed to pay for the improvements, the expense of the improvements was not chargeable against plaintiff partner upon dissolution of the partnership. *Knauss v. Hale*, 64 Idaho 218, 131 P.2d 292 (1942).

Demand for Accounting.

In suit by pledgee against partnership to foreclose pledges of assets in form of bonds, two partners having sold their interest in bonds to pledgee without consent of third, court properly decreed partnership accounting and settlement on application of third partner. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Disposal of Partnership Property.

Where partnership property consisted of bonds, it was proper to decree that bonds be sold and proceeds divided, or to enter judgment apportioning bonds as equally as possible and awarding money judgment for balance. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Distribution In Kind.

The decision of the trial court to distribute the partnership assets in kind rather than to liquidate them was consistent with the purposes of the Uniform Partnership Act, as the partnership had guaranteed partners' loan which defaulted and partners dissolved the partnership and sought the protection of the bankruptcy court. *Kelly v. Silverwood Estates*, 127 Idaho 624, 903 P.2d 1321 (1995).

Final Settlement of Partnership Indebtedness.

When one partner purchases the interest of the other, the transaction presumptively includes a final settlement of all partnership indebtedness existing between the partners. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

In-Kind Division of Assets.

By express agreement, winding-up partners may agree to an in-kind division of assets. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Liquidation of Assets.

Ordinarily, in any action to terminate a partnership, the trial court will order liquidation of the partnership assets by sale, with application of the proceeds according to the priorities set forth in this section. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Money Judgment.

Under the circumstances, it was not improper for the trial court to enter a money judgment for one partner against the remaining partners where substantial partnership liabilities were still outstanding. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Mutual Discharge from Liability.

Where parties to contract dissolving partnership expressly agreed that final settlement set forth in contract was complete, and that they mutually discharged each other from liability arising from previous association as copartners, partner who agreed to pay all liabilities arising from leasehold of partnership could not recover from copartner one-half of rent accruing after dissolution of partnership which was paid by him under covenant in lease; "liability" being a broad term of most comprehensive significance. *Bratton v. Morris*, 54 Idaho 743, 37 P.2d 1097 (1934).

Prior Accord and Satisfaction.

Where finding that partners made full and complete settlement and accounting of all their dealings in 1931 was sustained by the evidence, any indebtedness owing to partner, who allegedly paid purchase-price, freight, and cost of handling of seed potatoes purchased by partnership in 1928, was discharged and partner was not entitled in subsequent accounting proceeding to credit for such transactions. *Bussell v. Barry*, 61 Idaho 350, 102 P.2d 280 (1940).

Purpose.

A purpose of this section is to broaden the circumstances in which a partner is entitled to an accounting. *Ramseyer v. Ramseyer*, 98

Idaho 47, 558 P.2d 76 (1976).

The ultimate goal of an accounting is to ascertain the value of a plaintiff's interest in the partnership as of the date of dissolution and then to determine any profits attributable to the use of the plaintiff's right in the property of the dissolved partnership. *Arnold v. Burgess*, 113 Idaho 786, 747 P.2d 1315 (Ct. App. 1987).

Although the right to an accounting may arise as prescribed in this section, an accounting is generally held to be an equitable proceeding, designed to comprehensively investigate partnership transactions and adjudicate the rights of the partners. *Havelick v. Chobot*, 123 Idaho 714, 851 P.2d 1010 (Ct. App. 1993).

RESEARCH REFERENCES

Am. Jur. — 59A Am. Jur. 2d, Partnership, §§ 718, 761, 914.

C.J.S. — 68 C.J.S., Partnership, §§ 230, 269-278, 318-335, 359.

OFFICIAL COMMENT

1. Section 807 provides the default rules for the settlement of accounts and contributions among the partners in winding up the business. It is derived in part from UPA Sections 38(1) and 40.

2. Subsection (a) continues the rule in UPA Section 38(l) that, in winding up the business, the partnership assets must first be applied to discharge partnership liabilities to creditors. For this purpose, any required contribution by the partners is treated as an asset of the partnership. After the payment of all partnership liabilities, any surplus must be applied to pay in cash the net amount due the partners under subsection (b) by way of a liquidating distribution.

RUPA continues the "in-cash" rule of UPA Section 38(1) and is consistent with Section 402, which provides that a partner has no right to receive, and may not be required to accept, a distribution in kind, unless otherwise agreed. The in-cash rule avoids the valuation problems that afflict unwanted in-kind distributions.

The partnership must apply its assets to discharge the obligations of partners who are creditors on a parity with other creditors. See Section 404(f) and Comment 6. In effect, that abolishes the priority rules in UPA Section 40(b) and (c) which subordinate the payment of inside debt to outside debt. Both RULPA and the RMBCA do likewise. See RULPA § 804; RMBCA §§ 6.40(f), 14.05(a). Ultimately, however, a partner whose "debt" has been repaid by the partnership is personally liable, as a partner, for any outside debt remaining unsatisfied, unlike a limited partner or corporate shareholder. Accordingly, the obligation to contribute sufficient funds to satisfy the claims of outside creditors may result in the equitable subordination of inside debt when partnership assets are insufficient to satisfy all obligations to non-partners.

RUPA in effect abolishes the "dual priority" or "jingle" rule of UPA Section 40(h) and (i).

Those sections gave partnership creditors priority as to partnership property and separate creditors priority as to separate property. The jingle rule has already been preempted by the Bankruptcy Code, at least as to Chapter 7 partnership liquidation proceedings. Under Section 723(c) of the Bankruptcy Code, and under RUPA, partnership creditors share pro rata with the partners' individual creditors in the assets of the partners' estates.

3. Subsection (b) provides that each partner is entitled to a settlement of all partnership accounts upon winding up. It also establishes the default rules for closing out the partners' accounts. First, the profits and losses resulting from the liquidation of the partnership assets must be credited or charged to the partners' accounts, according to their respective shares of profits and losses. Then, the partnership must make a final liquidating distribution to those partners with a positive account balance. That distribution should be in the amount of the excess of credits over the charges in the account. Any partner with a negative account balance must contribute to the partnership an amount equal to the excess of charges over the credits in the account provided the excess relates to an obligation for which the partner is personally liable under Section 306. The partners may, however, agree that a negative account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

Section 807(b) makes clear that a partner's contribution obligation to a partnership in dissolution only considers the partner's share of obligations for which the partner was personally liable under Section 306 ("unshielded obligations"). See Comments to Section 401(b) (partner contribution obligation to an operating partnership). Properly determined under this Section, the total required partner contributions will be sufficient to satisfy the partnership's total unshielded obligations. In special circumstances where a partnership

has both shielded and unshielded obligations and the partner required contributions are used to first pay shielded partnership obligations, the partners may be required to make further contributions to satisfy the partnership unpaid unshielded obligations. The proper resolution of this matter is left to debtor-creditor law as well as the law governing the fiduciary obligations of the partners. See Section 104(a).

RUPA eliminates the distinction in UPA Section 40(b) between the liability owing to a partner in respect of capital and the liability owing in respect of profits. Section 807(b) speaks simply of the right of a partner to a liquidating distribution. That implements the logic of RUPA Sections 401(a) and 502 under which contributions to capital and shares in profits and losses combine to determine the right to distributions. The partners may, however, agree to share "operating" losses differently from "capital" losses, thereby continuing the UPA distinction.

4. Subsection (c) continues the UPA Section 40(d) rule that solvent partners share proportionately in the shortfall caused by insolvent partners who fail to contribute their proportionate share. The partnership may enforce a

partner's obligation to contribute. See Section 405(a). A partner is entitled to recover from the other partners any contributions in excess of that partner's share of the partnership's liabilities. See Section 405(b)(iii).

5. Subsection (d) provides that, after settling the partners' accounts, each partner must contribute, in the proportion in which he shares losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement. That continues the basic rule of UPA Section 40(d) and underscores that the obligation to contribute exists independently of the partnership's books of account. It specifically covers the situation of a partnership liability that was unknown when the partnership books were closed.

6. Under subsection (e), the estate of a deceased partner is liable for the partner's obligation to contribute to partnership losses. That continues the rule of UPA Section 40(g).

7. Subsection (f) provides that an assignee for the benefit of creditors of the partnership or of a partner (or other court appointed creditor representative) may enforce any partner's obligation to contribute to the partnership. That continues the rules of UPA Sections 36(4) and 40(e).

PART 9. CONVERSIONS AND MERGERS

53-3-901. Definitions. — In this part:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under chapter 2, title 53, Idaho Code, predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner. [I.C., § 53-3-901, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

1. Article 9 is new. The UPA is silent with respect to the conversion or merger of partnerships, and thus it is necessary under the UPA to structure those types of transactions as asset transfers. RUPA provides specific statutory authority for conversions and mergers. It provides for continuation of the partnership entity, thereby simplifying those transactions and adding certainty to the legal consequences.

A number of States currently authorize the merger of limited partnerships, and some authorize them to merge with other business entities such as corporations and limited liability companies. A few States currently authorize the merger of a general and a limited

partnership or the conversion of a general to a limited partnership.

2. As Section 908 makes clear, the requirements of Article 9 are not mandatory, and a partnership may convert or merge in any other manner provided by law. Article 9 is merely a "safe harbor." If the requirements of the article are followed, the conversion or merger is legally valid. Since most States have no other established procedure for the conversion or merger of partnerships, it is likely that the Article 9 procedures will be used in virtually all cases.

3. Article 9 does not restrict the provisions authorizing conversions and mergers to domestic partnerships. Since no filing is re-

quired for the creation of a partnership under RUPA, it is often unclear where a partnership is domiciled. Moreover, a partnership doing business in the State satisfies the definition of a partnership created under this Act since it is an association of two or more co-owners carrying on a business for profit. Even a partnership clearly domiciled in another State could easily amend its partnership agreement to provide that its internal affairs are to be governed by the laws of a jurisdiction that has enacted Article 9 of RUPA. No harm

is likely to result from extending to foreign partnerships the right to convert or merge under local law.

4. Because Article 9 deals with the conversion and merger of both general and limited partnerships, Section 901 sets forth four definitions distinguishing between the two types of partnerships solely for the purposes of Article 9. "Partner" includes both general and limited partners, and "general partner" includes general partners in both general and limited partnerships.

53-3-901A. Applicability of Idaho entity transactions act. —

(1) Unless the participating entity is excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger or a conversion in which a partnership is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Sections 53-3-903(b) and (c) and 53-3-905(c), Idaho Code, apply to transactions in which a partnership is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code. [I.C., § 53-3-901A, as added by 2007, ch. 116, § 10, p. 333.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

53-3-902. Conversion of partnership to limited partnership. —

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within

ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 2, title 53, Idaho Code. [I.C., § 53-3-902, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 902(a) authorizes the conversion of a "partnership" to a "limited partnership." Section 202(b) limits the usual RUPA definition of "partnership" to general partnerships. That definition is applicable to Article 9. If a limited partnership is contemplated, Article 9 uses the term "limited partnership." See Section 901(3).

Subsection (b) provides that the terms and conditions of the conversion must be approved by all the partners, unless the partnership agreement specifies otherwise for a conversion.

Subsection (c) provides that, after approval, the partnership must file a certificate of limited partnership which includes the requisite information concerning the conversion.

Subsection (d) provides that the conversion takes effect when the certificate is filed, unless a later effective date is specified.

Subsection (e) establishes the partners' liabilities following a conversion. A partner who becomes a limited partner as a result of the conversion remains fully liable as a general partner for any obligation arising before the effective date of the conversion, both to third parties and to other partners for contribution. Third parties who transact business with the

converted partnership unaware of a partner's new status as a limited partner are protected for 90 days after the conversion. Since RUPA Section 201(a)(3) requires the certificate of limited partnership to name all of the general partners, and under RUPA Section 902(c) the certificate must also include a statement of the conversion, parties transacting business with the converted partnership can protect themselves by checking the record of the State where the limited partnership is formed (the State where the conversion takes place). A former general partner who becomes a limited partner as a result of the conversion can avoid the lingering 90-day exposure to liability as a general partner by notifying those transacting business with the partnership of his limited partner status.

Although Section 902 does not expressly provide that a partner's withdrawal upon a term partnership's conversion to a limited partnership is rightful, it was assumed that the unanimity requirement for the approval of a conversion would afford a withdrawing partner adequate opportunity to protect his interest as a condition of approval. This question is left to the partnership agreement if it provides for conversion without the approval of all the partners.

53-3-903. Conversion of limited partnership to partnership. —

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is cancelled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 53-3-306, Idaho Code, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect. [I.C., § 53-3-903, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 903(a) authorizes the conversion of a limited partnership to a general partnership.

Subsection (b) provides that the conversion must be approved by all of the partners, even if the partnership agreement provides to the contrary. That includes all of the general and limited partners. See Section 901(4). The purpose of the unanimity requirement is to protect a limited partner from exposure to personal liability as a general partner without clear and knowing consent at the time of conversion. Despite a general voting provision to the contrary in the partnership agreement, conversion to a general partnership may never have been contemplated by the limited partner when the partnership investment was made.

Subsection (c) provides that, after approval of the conversion, the converted partnership must cancel its certificate of limited partnership. See RULPA § 203.

Subsection (d) provides that the conversion takes effect when the certificate of limited partnership is canceled.

Subsection (e) provides that a limited partner who becomes a general partner is liable as a general partner for all partnership obligations for which a general partner would otherwise be personally liable for if incurred after the effective date of the conversion, but still has only limited liability for obligations incurred before the conversion.

53-3-904. Effect of conversion — Entity unchanged. — (a) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

- (1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;
- (2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and
- (3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred. [I.C., § 53-3-904, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 904 sets forth the effect of a conversion on the partnership. Subsection (a) provides that the converted partnership is for all purposes the same entity as before the conversion.

Subsection (b) provides that upon conversion: (1) all partnership property remains vested in the converted entity; (2) all obligations remain the obligations of the converted entity; and (3) all pending legal actions may

be continued as if the conversion had not occurred. The term “entity” as used in Article 9 refers to either or both general and limited partnerships as the context requires.

Under subsection (b)(1), title to partnership property remains vested in the converted partnership. As a matter of general property law, title remains vested without further act or deed and without reversion or impairment.

53-3-905. Merger of partnerships. — (a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one (1) or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

- (1) The name of each partnership or limited partnership that is a party to the merger;
- (2) The name of the surviving entity into which the other partnerships or limited partnerships will merge;
- (3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

- (4) The terms and conditions of the merger;
 - (5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and
 - (6) The street address of the surviving entity's chief executive office.
- (c) The plan of merger must be approved:
- (1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
 - (2) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
- (d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
- (e) The merger takes effect on the later of:
- (1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;
 - (2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
 - (3) Any effective date specified in the plan of merger. [I.C., § 53-3-905, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 905 provides a "safe harbor" for the merger of a general partnership and one or more general or limited partnerships. The surviving entity may be either a general or a limited partnership.

The plan of merger must set forth the information required by subsection (b), including the status of each partner and the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity.

Subsection (c) provides that the plan of merger must be approved: (1) by all the partners of each general partnership that is a party to the merger, unless its partnership agreement specifically provides otherwise for mergers; and (2) by all the partners, including both general and limited partners, of each limited partnership that is a party to the merger, notwithstanding a contrary provision in its partnership agreement, unless specifically authorized by the law of the jurisdiction

in which that limited partnership is organized. Like Section 902(b), the purpose of the unanimity requirement is to protect limited partners from exposure to liability as general partners without their clear and knowing consent.

Subsection (d) provides that the plan of merger may be amended or abandoned at any time before the merger takes effect, if the plan so provides.

Subsection (e) provides that the merger takes effect on the later of: (1) approval by all parties to the merger; (2) filing of all required documents; or (3) the effective date specified in the plan. The surviving entity must file all notices and documents relating to the merger required by other applicable statutes governing the entities that are parties to the merger, such as articles of merger or a certificate of limited partnership. It may also amend or cancel a statement of partnership authority previously filed by any party to the merger.

53-3-906. Effect of merger. — (a) When a merger takes effect:

- (1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) Service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger shall be made by mailing the process by registered or certified mail, return receipt requested, to the registered agent of the surviving entity, if any, or to a partner of the surviving entity.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) All obligations of a party to the merger for which the partner was personally liable before the merger;

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) Except as otherwise provided in section 53-3-306, Idaho Code, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 53-3-807, Idaho Code, or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 53-3-701, Idaho Code, or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 53-3-702, Idaho Code, by an act of a general partner dissociated under this subsection, and the partner is liable under section 53-3-703, Idaho Code, for transactions entered into by the surviving entity after the merger takes effect. [I.C., § 53-3-906, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 906 states the effect of a merger on the partnerships that are parties to the merger and on the individual partners. Subsection (a) provides that when the

merger takes effect: (1) the separate existence of every partnership that is a party to the merger (other than the surviving entity) ceases; (2) all property owned by the parties to the merger vests in the surviving entity; (3) all obligations of every party to the merger become the obligations of the surviving entity; and (4) all legal actions pending against a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party. Title to partnership property vests in the surviving entity without further act or deed and without reversion or impairment.

Subsection (b) makes the Secretary of State the agent for service of process in any action against the surviving entity, if it is a foreign entity, to enforce an obligation of a domestic partnership that is a party to the merger. The purpose of this rule is to make it more convenient for local creditors to sue a foreign surviving entity when the credit was extended to a domestic partnership that has disappeared as a result of the merger.

Subsection (c) provides that a general partner of the surviving entity is liable for (1) all obligations for which the partner was personally liable before the merger; (2) all other obligations of the surviving entity incurred before the merger by a party to the merger, which obligations may be satisfied only out of the surviving entity's partnership property; and (3) all obligations incurred by the surviving entity after the merger, limited to the surviving entity's property in the case of limited partners and also limited to obligations of the partnership for which the partner was personally liable under Section 306.

This scheme of liability is similar to that of an incoming partner under Section 306(b). Only the surviving partnership itself is liable for all obligations, including obligations incurred by every constituent party before the merger. A general partner of the surviving entity is personally liable for obligations of the surviving entity incurred before the merger by the partnership of which he was a partner and those incurred by the surviving

entity after the merger. Thus, a general partner of the surviving entity is liable only to the extent of his partnership interest for obligations incurred before the merger by a constituent party of which he was not a general partner.

Subsection (d) requires general partners to contribute the amount necessary to satisfy all obligations for which they were personally liable before the merger, if such obligations are not satisfied out of the partnership property of the surviving entity, in the same manner as provided in Section 807 or the limited partnership act of the applicable jurisdiction, as if the merged party were then dissolved. See RULPA §§ 502, 608.

Subsection (e) provides for the dissociation of a partner of a party to the merger who does not become a partner in the surviving entity. The surviving entity must buy out that partner's interest in the partnership under Section 701 or other specifically applicable statute. If the state limited partnership act has a dissenter's rights provision providing a different method of determining the amount due a dissociating limited partner, it would apply, rather than Section 701, since the two statutes should be read in *pari materia*.

Although subsection (e) does not expressly provide that a partner's withdrawal upon the merger of a term partnership is rightful, it was assumed that the unanimity requirement for the approval of a merger would afford a withdrawing partner adequate opportunity to protect his interest as a condition of approval. This question is left to the partnership agreement if it provides for merger without the approval of all the partners.

Under subsection (e), a dissociating general partner's lingering agency power is wound down, pursuant to Section 702, the same as in any other dissociation. Moreover, a dissociating general partner may be liable, under Section 703, for obligations incurred by the surviving entity for up to two years after the merger. A dissociating general partner can, however, limit to 90 days his exposure to liability by filing a statement of dissociation under Section 704.

53-3-907. Statement of merger. — (a) After a merger which involves as a party thereto at least one (1) partnership which has filed a statement of partnership authority or a statement of qualification, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

- (1) The name of each partnership or limited partnership that is a party to the merger;
- (2) The name of the surviving entity into which the other partnerships or limited partnerships were merged;

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) Whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d) of this section, for the purposes of section 53-3-302, Idaho Code, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of section 53-3-302, Idaho Code, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording:

(1) A certified copy of the statement of merger in the office for recording transfers of that real property, if a statement of merger was previously filed with the office of the secretary of state; or

(2) An original statement of merger in the office for recording transfers of real property, if a statement of merger was not previously filed with the office of the secretary of state.

(e) A properly filed statement of merger, executed and declared to be accurate pursuant to section 53-3-105(b), Idaho Code, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section. [I.C., § 53-3-907, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 907(a) provides that the surviving entity may file a statement of merger. The execution, filing, and recording of the statement are governed by Section 105.

Subsection (b) requires the statement to contain the name of each party to the merger, the name and address of the surviving entity, and whether it is a general or limited partnership.

Subsection (c) provides that, for the purpose of the Section 302 rules regarding the transfer of partnership property, all personal and intangible property which before the merger was held in the name of a party to the merger becomes, upon the filing of the statement of merger with the Secretary of State, property held in the name of the surviving entity.

Subsection (d) provides a similar rule for

real property, except that real property does not become property held in the name of the surviving entity until a certified copy of the statement of merger is recorded in the office for recording transfers of that real property under local law.

Subsection (e) is a savings provision in the event a statement of merger fails to contain all of the information required by subsection (b). The statement will have the operative effect provided in subsections (c) and (d) if it is executed and declared to be accurate pursuant to Section 105(e) and correctly states the name of the party to the merger in whose name the property was held before the merger, so that it would be found by someone searching the record. Compare Section 303(c) (statement of partnership authority).

53-3-908. Nonexclusive. — This part is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law. [I.C., § 53-3-908, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 908 provides that Article 9 is not exclusive. It is merely a "safe harbor." Partnerships may be converted or merged in any other manner provided by statute or common law. Existing statutes in a few States already

authorize the conversion or merger of general partnerships and limited partnerships. See Comment 1 to Section 901. Those procedures may be followed in lieu of Article 9.

PART 10. LIMITED LIABILITY PARTNERSHIP

53-3-1001. Statement of qualification. — (a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification pursuant to section 53-3-105, Idaho Code. The statement must contain:

- (1) The name of the partnership and, if the partnership has previously filed a statement of partnership authority, the name it used in that statement and the date of its filing;
- (2) The street address of the partnership's chief executive office;
- (3) If the partnership does not have an office in this state, the information required by section 30-405(1), Idaho Code;
- (4) The mailing address to which the secretary of state may send mail to the partnership;
- (5) A statement that the partnership elects to be a limited liability partnership; and
- (6) A deferred effective date, if any.

(d) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 53-3-105(c), Idaho Code, or revoked pursuant to section 53-3-1003A, Idaho Code.

(e) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c) of this section.

(f) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(g) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. [I.C., § 53-3-1001, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 314, § 62, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (c)(3), substituted “the information required by section 30-405(1), Idaho Code” for “the name and street address of the partnership’s agent for service of process”; and deleted subsection (d), which

read: “The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state” and redesignated the remaining subsections accordingly.

OFFICIAL COMMENT

Any partnership may become a limited liability partnership by filing a statement of qualification. See Comments to Sections 101(6) [(7)] and 202(b) regarding a limited partnership filing a statement of qualification to become a limited liability limited partnership. Section 1001 sets forth the required contents of a statement of qualification. The section also sets forth requirements for the approval of a statement of qualification, establishes the effective date of the filing (and any amendments) which remains effective until canceled or revoked, and provides that the liability of the partners of a limited liability partnership is not affected by errors or later changes in the statement information.

Subsection (b) provides that the terms and conditions on which a partnership becomes a limited liability partnership must be generally be approved by the vote necessary to amend the partnership agreement. This means that the act of becoming a limited liability partnership is equivalent to an amendment of the partnership agreement. Where the partnership agreement is silent as to how it may be amended, the subsection (b) vote requires the approval of every partner. Since the limited liability partnership rules are not intended to increase the vote necessary to amend the partnership agreement, where the partnership agreement specifically sets forth an amendment process, that process may be used. Where a partnership agreement sets forth several amendment procedures depending upon the nature of the amendment, the required vote will be that necessary to amend the contribution obligations of the partners. The specific “contribution” vote is preferred because the filing of the statement directly affects partner contribution obligations. Therefore, the language “considers contribution” should be broadly interpreted to include any amendment vote that indirectly affects any partner’s contribution obligation such as a partner’s obligation to “indemnify” other partners.

The unanimous vote default rule reflects the significance of a partnership becoming a limited liability partnership. In general, upon such a filing each partner is released from the personal contribution obligation imposed under this Act in exchange for relinquishing the

right to enforce the contribution obligations of other partners under this Act. See Comments to Sections 306(c) and 401(b). The wisdom of this bargain will depend on many factors including the relative risks of the partners’ duties and the assets of the partnership.

Subsection (c) sets forth the information required in a statement of qualification. The must include the name of the partnership which must comply with Section 1002 to identify the partnership as a limited liability partnership. The statement must also include the address of the partnership’s chief executive office and, if different, the street address of any other office in this State. A statement must include the name and street address of an agent for service of process only if it does not have any office in this State.

As with other statements, a statement of qualification must be filed in the office of the Secretary of State. See Sections 101(13) [(15)] and 105(a). Accordingly, a statement of qualification is executed, filed, and otherwise regarded as a statement under this Act. For example, a copy of a filed statement must be sent to every nonfiling partner unless otherwise provided in the partnership agreement. See Sections 105(e) and 103(b)(1). A statement of qualification must be executed by at least two partners under penalties of perjury that the contents of the statement are accurate. See Section 105(c). A person who files the statement must promptly send a copy of the statement to every nonfiling partner but failure to send the copy does not limit the effectiveness of the filed statement to a nonpartner. Section 105(e). The filing must be accompanied by the fee required by the Secretary of State. Section 105(f).

Subsection (d) makes clear that once a statement is filed and effective, the status of the partnership as a limited liability partnership remains effective until the partnership status is either canceled or revoked “regardless of changes in the partnership.” Accordingly, a partnership that dissolves but whose business is continued under a business continuation agreement retains its status as a limited liability partnership without the need to refile a new statement. Also, limited liability partnership status remains even though a partnership may be dissolved, wound up, and

terminated. Even after the termination of the partnership, the former partners of a terminated partnership would not be personally liable for partnership obligations incurred while the partnership was a limited liability partnership.

Subsection (d) also makes clear that limited liability partnership status remains effective until actual cancellation under Section 1003 or revocation under Section 105(d). Ordinarily the terms and conditions of becoming a limited liability partnership must be approved by the vote necessary to amend the partnership agreement. See Sections 1001(b), 306(c), and 401(j). Since the statement of cancellation may be filed by a person authorized to file the original statement of qualification, the same vote necessary to approve the filing of the statement of qualification must be obtained to file the statement of cancellation. See Section 105(d).

Subsection (f) provides that once a statement of qualification is executed and filed under subsection (c) and Section 105, the

partnership assumes the status of a limited liability partnership. This status is intended to be conclusive with regard to third parties dealing with the partnership. It is not intended to affect the rights of partners. For example, a properly executed and filed statement of qualification conclusively establishes the limited liability shield described in Section 306(c). If the partners executing and filing the statement exceed their authority, the internal abuse of authority has no effect on the liability shield with regard to third parties. Partners may challenge the abuse of authority for purposes of establishing the liability of the culpable partners but may not effect the liability shield as to third parties. Likewise, third parties may not challenge the existence of the liability shield because the decision to file the statement lacked the proper vote. As a result, the filing of the statement creates the liability shield even when the required subsection (b) vote is not obtained.

53-3-1001A. Consolidated statement of partnership authority and qualification. — (a) A partnership may file a single statement which serves as both a statement of partnership authority and a statement of qualification as a limited liability partnership.

(b) The consolidated statement shall contain all of the information required for both statements which it replaces. [I.C., § 53-3-1001A, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — There is no corresponding official version of this section in the Uniform Act.

53-3-1001B. Change of registered agent. — (a) A limited liability partnership may change its registered agent, or the address of its registered agent, by filing with the office of the secretary of state a statement of change of registered agent, or by specifying in its annual report the change of registered agent or new street address of registered agent.

(b) A registered agent may resign as the registered agent for a limited liability partnership by filing with the secretary of state a statement of resignation of registered agent. The secretary of state shall send notice of the resignation to any partner of the limited liability partnership. The resignation shall be effective thirty (30) days after filing of the notice of resignation. [I.C., § 53-3-1001B, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 124, § 8, p. 291.]

STATUTORY NOTES

Compiler's Notes. — There is no corresponding official version of this section in the Uniform Act.

53-3-1002. Name. — The name of a limited liability partnership must end with “Registered Limited Liability Partnership,” “Limited Liability Partnership,” “R.L.L.P.,” “L.L.P.,” “RLLP” or “LLP.” [I.C., § 53-3-1002, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

The name provisions are intended to alert persons dealing with a limited liability partnership of the presence of the liability shield. Because many jurisdictions have adopted the naming concept of a “registered” limited liability partnership, this aspect has been retained. These name requirements also distinguish limited partnerships and general partnerships that become limited liability

partnerships because the new name must be at the end of and in addition to the general or limited partnership’s regular name. See Comments to Section 101(6) [(7)]. Since the name identification rules of this section do not alter the regular name of the partnership, they do not disturb historic notions of apparent authority of partners in both general and limited partnerships.

53-3-1003. Annual report. — (a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

- (1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (2) The name and mailing address of no less than two (2) partners;
- (3) The street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this state, if any; and
- (4) If the partnership does not have an office in this state, the information required by section 30-405(1), Idaho Code.

(b) No annual report need be filed during the first year after a limited liability partnership is qualified or authorized to transact business in this state. The first, and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a limited liability partnership was initially qualified or a foreign limited liability partnership was initially authorized to transact business. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

(c) Annual reports may be filed electronically by domestic or foreign limited liability partnerships by following the online filing instructions provided by the secretary of state. [I.C., § 53-3-1003, as added by 1998, ch. 65, § 2, p. 226; am. 2003, ch. 207, § 4, p. 550; am. 2005, ch. 274, § 4, p. 842; am. 2007, ch. 314, § 63, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, “street address of an office of the partnership in this state, if any” for “mailing address of an

office of the partnership to which mail may be sent"; and rewrote subsection (a)(4), which formerly read: "The name and street address

of the partnership's current agent for service of process."

OFFICIAL COMMENT

Section 1003 sets forth the requirements of an annual report that must be filed by all limited liability partnerships and any foreign limited liability partnership authorized to transact business in this State. See Sections 101(5)[(7)] (definition of a limited liability partnership) and 101(4)[(5)] (definition of a foreign limited liability partnership). The failure of a limited liability partnership to file an annual report is a basis for the Secretary of State to administratively revoke its statement of qualification. See Section 1003(c). A foreign limited liability partnership that fails to file an annual report may not maintain an action or proceeding in this State. See Section 1103(a).

Subsection (a) generally requires that an annual report contain the same information required in a statement of qualification. Compare Sections 1001(a) and 1003(a). The differences are that the annual report requires disclosure of the State of formation of a foreign limited liability partnership but deletes the delayed effective date and limited liability partnership election statement provisions of a statement of qualification. As such, the annual report serves to update the information required in a statement of qualification. Under subsection (b), the annual report must be filed between January 1 and April 1 of each calendar year following the year in which a statement of qualification was filed or a foreign limited liability partnership becomes authorized to transact business. This timing requirement means that a limited liability partnership must make an annual filing and

may not prefile multiple annual reports in a single year.

Subsection (c) sets forth the procedure for the Secretary of State to administratively revoke a partnership's statement of qualification for the failure to file an annual report when due or pay the required filing fee. The Secretary of State must provide a partnership at least 60 days' written notice of the intent to revoke the statement. The notice must be mailed to the partnership at the address of its chief executive office set forth in the last filed statement or annual report and must state the grounds for revocation as well as the effective date of revocation. The revocation is not effective if the stated problem is cured before the stated effective date.

Under subsection (d), a revocation only terminates the partnership's status as a limited liability partnership but is not an event of dissolution of the partnership itself. Where revocation occurs, a partnership may apply for reinstatement under subsection (e) within two years after the effective date of the revocation. The application must state that the grounds for revocation either did not exist or have been corrected. The Secretary of State may grant the application on the basis of the statements alone or require proof of correction. Under subsection (f), when the application is granted, the reinstatement relates back to and takes effect as of the effective date of the revocation. The relation back doctrine prevents gaps in a reinstated partnership's liability shield. See Comments to Section 306(c).

53-3-1003A. Revocation of statement of qualification. — (a) The secretary of state may revoke the statement of qualification of a partnership that fails to file an annual report when due or to maintain a registered agent for service of process in this state. To do so, the secretary of state shall provide the partnership at least sixty (60) days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed or that the registered agent has resigned or cannot be found, and the prospective effective date of the revocation. The revocation is not effective if the annual report or an appointment of registered agent, as appropriate, is filed before the effective date of the revocation.

(b) A revocation under subsection (a) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(c) A partnership whose statement of qualification has been revoked may apply to the secretary of state for reinstatement within two (2) years after the effective date of the revocation. The application must:

(1) State the name of the partnership and the effective date of the revocation; and

(2) Be accompanied by a current annual report or appointment of registered agent, as appropriate.

(d) A reinstatement under subsection (c) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred. [I.C., § 53-3-1003A, as added by 1998, ch. 65, § 2, p. 226; am. 2003, ch. 207, § 5, p. 550.]

STATUTORY NOTES

Compiler's Notes. — There is no corresponding official version of this section in the Uniform Act.

PART 11. FOREIGN LIMITED LIABILITY PARTNERSHIP

53-3-1101. Law governing foreign limited liability partnership.

— (a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership. [I.C., § 53-3-1101, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 1101 provides that the laws where a foreign limited liability partnership is formed rather than the laws of this State govern both the internal relations of the partnership and liability of its partners for the obligations of the partnership. See Section 101(4)[(5)] (definition of a foreign limited liability partnership). Section 106(b) provides that the laws of this State govern the internal relations of a domestic limited liability and the liability of its partners for the obligations of the partnership. See Sections 101(5)[(6)] (definition of a domestic limited liability partnership). A partnership may therefore choose the laws of a particular jurisdiction by filing a statement of qualification in that jurisdiction. But there are limitations on this choice.

Subsections (b) and (c) together make clear

that although a foreign limited liability partnership may not be denied a statement of foreign qualification simply because of a difference between the laws of its foreign jurisdiction and the laws of this State, it may not engage in any business or exercise any power in this State that a domestic limited liability partnership may not engage in or exercise. Under subsection (c), a foreign limited liability partnership that engages in a business or exercises a power in this State that a domestic may not engage in or exercise, does so only as an ordinary partnership without the benefit of the limited liability partnership liability shield set forth in Section 306(c). In this sense, a foreign limited liability partnership is treated the same as a domestic limited liability partnership. Also, the Attorney Gen-

eral may maintain an action to restrain a foreign limited liability partnership from transacting an unauthorized business in this State. See Section 1105.

53-3-1102. Statement of foreign qualification. — (a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

- (1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP";
- (2) The street address of the partnership's chief executive office and, if different, the mailing address to which mail may be sent;
- (3) The information required by section 30-405(a) [section 30-405(1)], Idaho Code; and
- (4) A deferred effective date, if any.

(b) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 53-3-105(c), Idaho Code, or revoked pursuant to section 53-3-1003A, Idaho Code.

(c) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. [I.C., § 53-3-1102, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 314, § 64, p. 885.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (a)(3), which formerly read: "The name and address of the partnership's agent for service of process"; and deleted subsection (b), which read: "The agent of a foreign limited liability partnership for service of process must be an individual

who is a resident of this state or other person authorized to do business in this state" and redesignated the remaining subsections accordingly.

Compiler's Notes. — The bracketed citation in paragraph (a)(3) was added by the compiler to correct the statutory reference.

OFFICIAL COMMENT

Section 1102 provides that a foreign limited liability partnership must file a statement of foreign qualification before transacting business in this State. The section also sets forth the information required in the statement. As with other statements, a statement of foreign qualification must be filed in the office of the Secretary of State. See Sections 101(13)[(15)], 105(a), and 1001(c). Accordingly, a statement of foreign qualification is executed, filed, and otherwise regarded as a statement under this Act. See Section 101(13)[(15)] (definition of a statement includes a statement of foreign qualification).

Subsection (a) generally requires the same information in a statement of foreign qualification as is required in a statement of quali-

fication. Compare Section 1001(c). The statement of foreign qualification must include a name that complies with the requirements for domestic limited liability partnership under Section 1002 and must include the address of the partnership's chief executive office and, if different, the street address of any other office in this State. If a foreign limited liability partnership does not have any office in this State, the statement of foreign qualification must include the name and street address of an agent for service of process.

As with a statement of qualification, a statement of foreign qualification (and amendments) is effective when filed or at a later specified filing date. Compare Sections 1102(b) and (c) with Sections 1001(e) and (h).

Likewise, a statement of foreign qualification remains effective until canceled by the partnership or revoked by the Secretary of State, regardless of changes in the partnership. See Sections 105(d) (statement cancellation) and Section 1003 (revocation for failure to file annual report or pay annual filing fee) and Compare Sections 1102(b) and 1001(e). State-

ment of qualification provisions regarding the relationship of the status of a foreign partnership relative to its initial filing of a statement are governed by foreign law and are therefore omitted from this section. See Sections 1001(f) (effect of errors and omissions) and (g) (filing establishes all conditions precedent to qualification).

53-3-1103. Effect of failure to qualify. — (a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, service of process with respect to a right of action arising out of the transaction of business in this state may be made by registered or certified mail, return receipt requested, addressed to any partner or to the registered agent, if any, in the jurisdiction under whose laws the partnership was organized. [I.C., § 53-3-1103, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 1103 makes clear that the only consequence of a failure to file a statement of foreign qualification is that the foreign limited liability partnership will not be able to maintain an action or proceeding in this State. The partnership's contracts remain valid, it may defend an action or proceeding, personal liability of the partners is not waived, and the Secretary of State is the agent for service of process with respect to claims arising out of transacting business in this State. Sections 1103(b)-(d). Once a statement of foreign qualification is filed, the Secretary of State may revoke the statement for

failure to file an annual report but the partnership has the right to cure the failure for two years. See Section 1003(c) and (e). Since the failure to file a statement of foreign qualification has no impact on the liability shield of the partners, a revocation of a statement of foreign qualification also has no impact on the liability shield created under foreign laws. Compare Sections 1103(c) and 1003(f) (revocation of the statement of qualification of a domestic limited liability partnership removes partner liability shield unless filing problems cured within two years).

53-3-1104. Activities not constituting transacting business. — (a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this part include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;

- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state. [I.C., § 53-3-1104, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Because the Attorney General may restrain a foreign limited liability partnership from transacting an unauthorized business in this State and a foreign partnership may not maintain an action or proceeding in this State, the concept of "transacting business" in this State is important. To provide more certainty, subsection (a) sets forth ten separate

categories of activities that do not constitute transacting business. Subsection (c) makes clear that the section only considers the definition of "transacting business" and as no impact on whether a foreign limited liability partnership's activities in this State subject it to service of process, taxation, or regulation under any other law of this State.

JUDICIAL DECISIONS

Cited in: KEB Enters., L.P. v. Smedley, 140 Idaho 746, 101 P.3d 690 (2004).

53-3-1105. Action by attorney general. — The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this part. [I.C., § 53-3-1105, as added by 1998, ch. 65, § 2, p. 226.]

OFFICIAL COMMENT

Section 1105 makes clear that the Attorney General may restrain a foreign limited liability partnership from transacting an unauthorized business in this State. As a threshold matter, a foreign limited liability partnership must be "transacting business" in this State within

the meaning of Section 1104. Secondly, the business transacted in this State must be that which could not be engaged in by a domestic limited liability partnership. See Section 1101(c). The fact that a foreign limited liability partnership has a statement of foreign

qualification does not permit it to engage in any unauthorized business in this State or impair the power of the Attorney General to

restrain the foreign partnership from engaging in the unauthorized business. See Section 1101(c).

PART 12. MISCELLANEOUS PROVISIONS

53-3-1201. Uniformity of application and construction. — This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [I.C., § 53-3-1201, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — Idaho did not adopt sections 1204, 1205 and 1208 through 1211 of the Uniform Act. Sections 1206 and 1207 of the Uniform Act correspond to §§ 53-3-1204 and 53-3-1205, Idaho Code, respectively. The

Official Comments to sections 1204 and 1205 have been omitted.

For words “this act”, see Compiler's Notes, § 53-101.

53-3-1202. Short title. — This act may be cited as the “Uniform Partnership Act (1996).” [I.C., § 53-3-1202, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 53-101.

53-3-1203. Severability clause. — If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [I.C., § 53-3-1203, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 53-101.

53-3-1204. Applicability. — (a) Before July 1, 2001, this act governs only a partnership formed:

(1) After January 1, 2001, except a partnership that is continuing the business of a dissolved partnership under section 53-341, Idaho Code, of the superseded Uniform Partnership Law; and

(2) Before January 1, 2001, that elects, as provided by subsection (c) of this section, to be governed by this act.

(b) On and after July 1, 2001, this act governs all partnerships.

(c) Before July 1, 2001, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this act. The provisions of this act relating to the liability of the partnership's partners to third parties apply to

limit those partners' liability to a third party who had done business with the partnership within one (1) year before the partnership's election to be governed by this act only if the third party knows or has received a notification of the partnership's election to be governed by this act. [I.C., § 53-3-1204, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-101.

OFFICIAL COMMENT

This section provides for a transition period in the applicability of the Act to existing partnerships, similar to that provided in the revised Texas partnership act. See Tex. Rev. Civ. Stat. Ann. art. 6132b-10.03 (Vernon Supp. 1994). Subsection (a) makes application of the Act mandatory for all partnerships formed after the effective date of the Act and permissive, by election, for existing partnerships. That affords existing partnerships and partners an opportunity to consider the changes effected by RUPA and to amend their partnership agreements, if appropriate.

Under subsection (b), application of the Act becomes mandatory for all partnerships, including existing partnerships that did not previously elect to be governed by it, upon a future date to be established by the adopting State. Texas, for example, deferred for five years mandatory compliance by existing partnerships.

Subsection (c) provides that an existing partnership may voluntarily elect to be governed by RUPA in the manner provided for amending its partnership agreement. Under UPA Section 18(h), that requires the consent of all the partners, unless otherwise agreed. Third parties doing business with the partnership must know or be notified of the election before RUPA's rules limiting a partner's liability become effective as to them. Those rules would include, for example, the provisions of Section 704 limiting the liability of a partner 90 days after the filing of a statement of dissociation. Without knowledge of the partnership's election, third parties would not be aware that they must check the record to ascertain the extent of a dissociated partner's personal liability.

53-3-1205. Savings clause. — This act does not affect an action or proceeding commenced or right accrued before this act takes effect. [I.C., § 53-3-1205, as added by 1998, ch. 65, § 2, p. 226.]

STATUTORY NOTES

Compiler's Notes. — For words "this act", see Compiler's Notes, § 53-101.

OFFICIAL COMMENT

This section continues the prior law after the effective date of the Act with respect to a pending action or proceeding or a right accrued at the time of the effective date. Since courts generally apply the law that exists at the time an action is commenced, in many circumstances the new law of this Act would displace the old law, but for this section.

Almost all States have general savings statutes, usually as part of their statutory construction acts. These are often very broad. Compare Uniform Statute and Rule Construction Act § 16(a) (narrow savings clause).

As RUPA is remedial, the more limited savings provisions in Section 1207 are more appropriate than the broad savings provisions of the usual general savings clause. See generally, Comment to Uniform Statute and Rule Construction Act § 16.

Pending "action" refers to a judicial proceeding, while "proceeding" is broader and includes administrative proceedings. Although it is not always clear whether a right has "accrued," the term generally means that a cause of action has matured and is ripe for legal redress. See, e.g., *Estate of Hoover v.*

Iowa Dept. of Social Services, 299 Iowa 702, 251 N.W.2d 529 (1977); *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W.2d 194

(1966). An inchoate right is not enough, and thus, for example, there is no accrued right under a contract until it is breached.

CHAPTER 4

MINING PARTNERSHIP

SECTION.

- 53-401. When mining partnership exists.
- 53-402. Express agreement not necessary.
- 53-403. Sharing profits and losses.
- 53-404. Lien of partners and creditors.
- 53-405. Mine partnership property.
- 53-406. Sale of interest by partner.
- 53-407. Liability of purchaser for partners' liens for debts and advancements.

SECTION.

- 53-408. Liability of purchaser for liens resulting from relation of partners to each other.
- 53-409. Members cannot bind partnership.
- 53-410. Majority of shares governs.
- 53-411. Partnership contracts may be recorded.
- 53-412. Record constructive notice.

53-401. When mining partnership exists. — A mining partnership exists when two (2) or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same. [R.S., § 3300; reen. R.C. & C.L., § 3361; C.S., § 5856; I.C.A., § 52-401.]

STATUTORY NOTES

Cross References. — Mines and mining, title 47, Idaho Code.

JUDICIAL DECISIONS

Formation and Nature of Partnership.

It is not necessary that all co-owners in claim shall be engaged in working it, either together or separately, in order to constitute a mining partnership. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Parties who acquire a mine for purpose of working it and actually engage in working same comprise a mining partnership although they do not own the same. *Haskins v. Curran*, 4 Idaho 573, 43 P. 559 (1895).

To constitute mining partnership it is essential that co-owners actually engage in working mine or in business of operating it; the cotenancy of two or more persons in a mining claim is not of itself sufficient to constitute such tenants mining partners. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

It is not essential that all tenants join in the working or business of mining in order to establish mining partnership; that relation

may be established among such co-owners as have actually engaged in the working or mining operation; those not so engaged will be left to their right and be chargeable by their duties as cotenants only. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

A mining partnership differs from an ordinary one in that it is formed without any express agreement between the parties and exists from joint ownership in a mine and working the same. One partner may sell his interest without consent of the others, or die, and the partnership is not dissolved. A new owner may purchase an interest in the mine, or inherit it, and he becomes a mining partner in the working thereof. It differs from an ordinary partnership in another respect also, in that the majority in interest have the right to control the method of working and the means to be employed. In these respects and in its continuity, it resembles a private corporation. *Albertini v. Hull Lease*, 54 Idaho 30, 28 P.2d 205 (1933).

RESEARCH REFERENCES

Am. Jur. — 53 Am. Jur. 2d, Mines and Minerals, § 216 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, § 387 et seq.

53-402. Express agreement not necessary. — An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interest in the mine and working the same for the purpose of extracting the minerals therefrom. [R.S., § 3301; reen. R.C. & C.L., § 3362; C.S., § 5857; I.C.A., § 52-402.]

JUDICIAL DECISIONS

Necessity for Agreement.

Mining partnership exists without any agreement, either express or implied, and relation differs in this from that of tenants in common. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect

property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-403. Sharing profits and losses. — A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine, bears to the whole partnership capital or whole number of shares. [R.S., § 3302; reen. R.C. & C.L., § 3363; C.S., § 5858; I.C.A., § 52-403.]

JUDICIAL DECISIONS

Rights of Majority.

Those owning a majority of shares or interests in mining partnership have the right to control its methods of working; therefore, majority owner of shares in mining partnership is entitled to an injunction to restrain other partners from working claim except in the manner directed by him. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-404. Lien of partners and creditors. — Each member of a mining partnership has a lien on the partnership property for the debts due to the creditors thereof, and for money advanced by him for its use. A lien exists in favor of the creditors notwithstanding there is an agreement among the partners that it must not. [R.S., § 3303; reen. R.C. & C.L., § 3364; C.S., § 5859; I.C.A., § 52-404.]

STATUTORY NOTES

Cross References. — Protection of creditor's lien on unpatented claim pending foreclosure, §§ 47-1101, 47-1102.

JUDICIAL DECISIONS

Cited in: *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

RESEARCH REFERENCES

Am. Jur. — 53 Am. Jur. 2d, Mines and Minerals, § 346.

53-405. Mine partnership property. — The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. [R.S., § 3304; reen. R.C. & C.L., § 3365; C.S., § 5860; I.C.A., § 52-405.]

JUDICIAL DECISIONS

ANALYSIS

Mining ground.
Rights of majority.

Mining Ground.

Mining ground is partnership property, whether purchased with partnership or individual funds. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Rights of Majority.

Minority owner has the right to inspect property to ascertain its value and methods in

use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-406. Sale of interest by partner. — One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership. [R.S., § 3305; reen. R.C. & C.L., § 3366; C.S., § 5861; I.C.A., § 52-406.]

JUDICIAL DECISIONS

Rights of Majority.

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to

enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-407. Liability of purchaser for partners' liens for debts and advancements. — A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership unless he purchased in good faith, for a valuable consideration, without notice of such lien. [R.S., § 3306; reen. R.C. & C.L., § 3367; C.S., § 5862; I.C.A., § 52-407.]

JUDICIAL DECISIONS

Rights of Majority.

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to

enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-408. Liability of purchaser for liens resulting from relation of partners to each other. — A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership. [R.S., § 3307; reen. R.C. & C.L., § 3368; C.S., § 5863; I.C.A., § 52-408.]

JUDICIAL DECISIONS

Rights of Majority.

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to

enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-409. Members cannot bind partnership. — No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership except by express authority derived from the members thereof. [R.S., § 3308; reen. R.C. & C.L., § 3369; C.S., § 5864; I.C.A., § 52-409.]

JUDICIAL DECISIONS

Rights of Majority.

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to

enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-410. Majority of shares governs. — The decision of the members, owning a majority of the shares or interests in a mining partnership, binds it in the conduct of its business. [R.S., § 3309; reen. R.C. & C.L., § 3370; C.S., § 5865; I.C.A., § 52-410.]

JUDICIAL DECISIONS

ANALYSIS

Nature of partnership.

Rights of majority.

Nature of Partnership.

It is not essential that all tenants join in the working or business of mining in order to establish mining partnership; that relation may be established among such co-owners as have actually engaged in the working or mining operation; those not so engaged will be left to their right and be chargeable by their duties as cotenants only. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

Rights of Majority.

Those owning a majority of shares or interests in mining partnership have the right to control its methods of working; therefore,

majority owner of shares in mining partnership is entitled to an injunction to restrain other partners from working claim except in the manner directed by him. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

53-411. Partnership contracts may be recorded. — Written contracts relating to prospecting or mining, or the formation of copartnership for that purpose, when signed by the parties thereto and indorsed by at least one witness, may be recorded in the office of the county recorder of the county wherein it is proposed to prosecute the business of said copartnership, or where the property affected by such contract is situated. [1899, p. 366, § 1; reen. R.C. & C.L., § 3371; C.S., § 5866; I.C.A., § 52-411.]

53-412. Record constructive notice. — Such record shall be constructive notice to all persons of the matters contained in such contract or copartnership agreement. [1899, p. 366, § 2; reen. R.C. & C.L., § 3372; C.S., § 5867; I.C.A., § 52-412.]

CHAPTER 5

ASSUMED BUSINESS NAMES

SECTION.

- 53-501. Short title.
- 53-502. Purpose.
- 53-503. Definitions.
- 53-504. Filing of certificate required.
- 53-505. Contents of certificate.
- 53-506. Effect of filing — Duration — Continuation.

SECTION.

- 53-507. Amendment of certificate.
- 53-508. Cancellation of certificate.
- 53-509. Consequences of noncompliance.
- 53-510. Fees.
- 53-511. [Repealed.]

53-501. Short title. — This act shall be known and may be cited as “The Assumed Business Names Act of 1997.” [I.C., § 53-501, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

- Prior Laws.** — Former § 53-501, which comprised 1921, ch. 212, § 1, p. 424; I.C.A., § 52-501, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.
- Compiler’s Notes.** — The words “this act” refer to S.L. 1996, ch. 218, § 2, compiled as §§ 53-501 to 53-511.
- Effective Dates.** — Section 5 of S.L. 1996, ch. 218 read, “This act shall be in full force

and effect on and after January 1, 1997, provided that the Legislature passes an act appropriating funds to implement this act. If funds are not appropriated, this act shall have no force and effect.” Since such funds were appropriated by the Legislature, §§ 53-501 to 53-511 were in full force and effect as of January 1, 1997.

JUDICIAL DECISIONS

Cited in: Noreen v. Price Dev. Co., 135 Idaho 816, 25 P.3d 129 (Ct. App. 2001).

RESEARCH REFERENCES

- Am. Jur.** — 59A Am. Jur. 2d, Partnership, § 60 et seq., 192.
- C.J.S.** — 68 C.J.S., Partnership, § 67.
- A.L.R.** — Liability of transferor of business operated under tradename for supplies furnished to successor by one without notice of transfer. 70 A.L.R.3d 1250.

53-502. Purpose. — The purpose of this chapter is to ensure disclosure on the public record of the true names of persons who transact business in Idaho. Compliance with the provisions of this chapter does not confer any exclusive right to the use of an assumed business name in Idaho. [I.C., § 53-502, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Prior Laws. — Former § 53-502, which comprised 1921, ch. 212, § 2, p. 424; I.C.A., § 52-502, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

53-503. Definitions. — When used in this chapter, the terms defined in this section shall have the following meanings:

(1) "Assumed business name" shall mean:

(a) Any name other than the true name of any formally organized or registered entity, under which name the entity holds itself out for the transaction of business in the state of Idaho; or

(b) Any name under which any individual, any group of individuals or other persons, or any entity other than a formally organized or registered entity, holds itself out for the transaction of business in the state of Idaho, if that name does not include in full the true names of all individuals and other persons who have a financial interest in the business which is or may be transacted; which name shall not include words or abbreviations which falsely state or imply governmental affiliation or the existence of a formally organized or registered entity.

(2) "Formally organized or registered entity" shall mean a legal entity which is created in, authorized to do business in, or given special powers or privileges by the state of Idaho or the federal government by virtue of filing its organizational document, application for authority to do business or registration statement with the secretary of state, the department of finance, the department of insurance, or an agency of the federal government, pursuant to law. Formally organized or registered entities include corporations, limited liability companies, limited partnerships, limited liability partnerships, foreign insurance companies, credit unions, national banks and other entities created pursuant to federal law.

(3) "Foreign," as applied to a formally organized or registered entity, shall mean organized under the laws of a jurisdiction other than Idaho or the federal government.

(4) "Individual" shall mean a natural person.

(5) "Person" shall mean an individual, a trust or estate, a partnership, or a formally organized or registered entity.

(6) "Transact business" shall mean to engage in any commercial or other activity which is intended to or likely to produce a financial benefit, whether it is for the purpose of profit to the person who engages in the activity or for the purpose of supporting a charitable, benevolent or other nonprofit function.

(7) "True name" shall have the following meanings:

(a) When applied to a formally organized or registered entity, the name by which the entity is identified on its organizational document, application for authority to do business or registration statement which is on file with the appropriate governmental entity. As to a foreign formally organized or registered entity which has been required to adopt an assumed business name on its application for authority to do business or its registration statement as a condition of obtaining authority to do business in Idaho, the term "true name" shall include the assumed business name which appears on the application for authority to do business or registration statement.

(b) When applied to an individual, the name which the individual uses to bind himself or herself to legal obligations, or to obtain privileges, licenses or benefits from government. The true name will include the surname and some combination of given names or initials, and may include other identifiers such as "Jr.," "3d" or "III." [I.C., § 53-503, as added by 1996, ch. 218, § 2, p. 718; am. 1997, ch. 133, § 1, p. 400; am. 2005, ch. 272, § 4, p. 836.]

STATUTORY NOTES

Prior Laws. — Former § 53-503, which was compiled as 1921, ch. 212, § 2, p. 424; I.C.A., § 52-502, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

Effective Dates. — This section became

effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See *Effective Dates*, § 53-501.

Section 2 of S.L. 1997, ch. 133 declared an emergency. Approved March 15, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Assumed Name.

Where partnership name consisted of the true surnames of each of the partners, without disclosing their initials or Christian names, and joined by "&" or "and," it was not an assumed or fictitious name or a designation not showing the true and real names of the persons conducting the business. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

In the absence of statutory prohibition, a corporation may have, and be known to the public by, more than one name, and, in addition to the name given by charter, a corporation may acquire other names by user or reputation, and a contract entered into by or with a corporation, under an assumed name, may be enforced by either party, if corporation's identity is established. *Colorado Milling*

& Elevator Co. v. *Proctor*, 58 Idaho 578, 76 P.2d 438 (1938).

A contract made with an individual or a partnership doing business under an assumed or fictitious name is not invalid. *Nowels v. Ketchersid Music, Inc.*, 80 Idaho 486, 333 P.2d 869 (1958).

Although the certificate of assumed or fictitious name was filed after the commencement of the action but before the trial, there was sufficient compliance to permit the maintaining of the action in claim or delivery to recover possession of certain phonographic equipment sold under several conditional sales contracts, vendor being the real party in interest and being entitled to possession of such property or to the unpaid balance of the purchase price after due demand for payment and default. *Nowels v. Ketchersid Music, Inc.*, 80 Idaho 486, 333 P.2d 869 (1958).

53-504. Filing of certificate required. — (1) Any person who proposes to or intends to transact business in Idaho under an assumed business name shall, before beginning to transact business, file with the secretary of state a certificate of assumed business name in a form prescribed by the

secretary of state. The form may be in any medium permitted by the secretary of state. The certificate shall be executed for the person by an individual who has actual authority to bind the person to legal obligations.

(2) A separate certificate of assumed business name must be filed for each assumed business name a person uses. [I.C., § 53-504, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Prior Laws. — Former § 53-504, which comprised 1921, ch. 212, § 4, p. 424; I.C.A., § 52-504; 1994, ch. 405, § 8, p. 1272; 1995, ch. 92, § 11, p. 263, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

JUDICIAL DECISIONS

ANALYSIS

Construction with other statutes.
Statutes of limitation.

Construction with Other Statutes.

Defendant's failure to file a certificate of assumed business name did not implicate the statute of limitation tolling provisions of § 5-229, where the uncontroverted evidence established that at all relevant times plaintiff had on file with the secretary of state a designation of registered agent authorized to receive service of process. *Noreen v. Price Dev. Co.*, 135 Idaho 816, 25 P.3d 129 (Ct. App. 2001).

Statutes of Limitation.

Failure of the corporation to comply with Idaho's Assumed Business Names Act, § 53-501 et seq., did not support a tolling of the statute of limitations where slip and fall plaintiff failed to find out where her fall took place and sued the wrong hotel entirely. *Winn v. Campbell*, 145 Idaho 727, 184 P.3d 852 (2008).

53-505. Contents of certificate. — The certificate of assumed business name shall include:

(1) The assumed business name as it is used in the transaction of business;

(2) The true names and business addresses of every person who has a financial or control interest in the business to be transacted under the assumed business name;

(3) The general type of business to be transacted under the assumed business name, using categories prescribed on the form by the secretary of state; and

(4) Other information as the secretary of state may require. [I.C., § 53-505, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Prior Laws. — Former § 53-505, which comprised 1921, ch. 212, § 5, p. 424; I.C.A., § 52-505; am. 1951, ch. 251, § 6, p. 540; am. 1959, ch. 72, § 6, p. 157; am. 1981, ch. 294, § 1, p. 614; am. 1982, ch. 208, § 1, p. 571; am. 1989, ch. 12, § 2, p. 13, was repealed by S.L.

1996, ch. 218, § 1, effective January 1, 1997.

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

53-506. Effect of filing — Duration — Continuation. — (1) A person may conduct business under an assumed business name if a certificate of assumed business name has been filed with the secretary of state and is in effect.

(2) A certificate of assumed business name is in effect upon filing until canceled pursuant to section 53-508, Idaho Code. [I.C., § 53-506, as added by 1996, ch. 218, § 2, p. 718; am. 2003, ch. 223, § 1, p. 575.]

STATUTORY NOTES

Prior Laws. — Former § 53-506, which comprised 1921, ch. 212, § 6, p. 424; I.C.A., § 52-506, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

Effective Dates. — This section became

Section 4 of S.L. 2003, ch. 223 declared an emergency. Approved April 4, 2003.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Interstate Transactions.

Where business done by company is purely interstate and neither sale nor trade acceptances were completed within state, failure to file certificate of company doing business un-

der fictitious name did not render such trade acceptances prima facie fraudulent. *Pacific States Automotive Fin. Corp. v. Addison*, 45 Idaho 270, 261 P. 683 (1927).

53-507. Amendment of certificate. — (1) If the identity or business address of any person who has a financial or control interest in the business transacted under the assumed business name changes, or if the certificate of assumed business name becomes materially misleading in any other way, the person who transacts that business shall, within six (6) months thereafter, file with the secretary of state a certificate of amendment to the certificate of assumed business name in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state.

(2) The certificate of amendment shall specify how the certificate of assumed business name is to be amended, and shall be executed in the same manner as required for a certificate of assumed business name. [I.C., § 53-507, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Prior Laws. — Former § 53-507, which comprised 1921, ch. 212, § 7, p. 424; I.C.A., § 52-507, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

53-508. Cancellation of certificate. — (1) A person who discontinues use of an assumed business name may cancel its certificate of assumed business name by filing with the secretary of state a certificate of cancellation in a form prescribed by the secretary of state. The form may be in any medium permitted by the secretary of state.

(2) The certificate of cancellation shall be executed in the same manner as required for a certificate of assumed business name. [I.C., § 53-508, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

53-509. Consequences of noncompliance. — (1) Any person who transacts business in Idaho under an assumed business name without having complied with the requirements of this chapter shall not be entitled to maintain any legal action in the courts of this state until the person has filed a certificate of assumed business name as required by this chapter.

(2) Any person who suffers a loss because of another person's noncompliance with the requirements of this chapter shall be entitled to recover damages in the amount of the loss, and attorney fees and costs incurred in connection with recovery of damages.

(3) Noncompliance shall be held to include false, misleading or incomplete information in a certificate of assumed business name, as well as failure to file. [I.C., § 53-509, as added by 1996, ch. 218, § 2, p. 718.]

STATUTORY NOTES

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See Effective Dates, § 53-501.

JUDICIAL DECISIONS

Applicability.

The only remedies for or consequences of noncompliance prescribed in the Assumed Business Names Act of 1997 are those provided in this section, and tolling of the statute of limitation on a claim against a noncomplying business is not a remedy provided by the legislation. *Noreen v. Price Dev. Co.*, 135 Idaho 816, 25 P.3d 129 (Ct. App. 2001).

Failure of the corporation to comply with Idaho's Assumed Business Names Act, § 53-501 et seq., did not support a tolling of the statute of limitations where slip and fall plaintiff failed to find out where her fall took place and sued the wrong hotel entirely. *Winn v. Campbell*, 145 Idaho 727, 184 P.3d 852 (2008).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Time for filing.

Waiver of objection to suit.

Time for Filing.

Failure to file certificate affects only qualifications of person to sue, and, upon filing certificate, disqualification is removed and action may be maintained on contract made before or after such filing. *Gallafent v. Tucker*, 48 Idaho 240, 281 P. 375 (1929).

In action to foreclose pledges of personal property brought against partnership, failure of partner, filing cross-complaint in nature of action for accounting, to file certificate re-

quired by this law was not objectionable, where plaintiff knew he was dealing with a partnership and knew the true, full name of each partner. *Johnston v. Ellis*, 49 Idaho 1, 285 P. 1015 (1930).

Although the certificate of assumed or fictitious name was filed after the commencement of the action but before the trial, there was sufficient compliance to permit the maintaining of the action in claim or delivery to recover possession of certain phonographic equip-

ment sold under several conditional sales contracts, vendor being the real party in interest and being entitled to possession of such property or to the unpaid balance of the purchase price after due demand for payment and default. *Nowels v. Ketchersid Music, Inc.*, 80 Idaho 486, 333 P.2d 869 (1958).

Plaintiffs doing business as a realty company brought an action upon a promissory note but did not allege compliance with former law requiring the filing of a certificate of trade name and defendants in their answers specifically pleaded plaintiffs' lack of capacity to maintain such action urging the bar of such former law. The court held that plaintiffs established sufficient compliance with former law to "maintain" the action by

filing a supplemental complaint in which they alleged compliance with § 53-501 by the filing of the required certificate on an earlier date. *Shinn v. Smith*, 81 Idaho 57, 336 P.2d 690 (1959).

Waiver of Objection to Suit.

Noncompliance with former law requiring filing of certificate of trade name was affirmative defense going to plaintiff's capacity to sue, and when failure to allege compliance was not raised by demurrer or answer, objection was waived. *Gallafent v. Tucker*, 48 Idaho 240, 281 P. 375 (1929); *Shillingford v. Benewah County*, 48 Idaho 447, 282 P. 864 (1929).

53-510. Fees. — The secretary of state shall charge and collect fees for services under this chapter as follows:

- (1) For filing a certificate of assumed business name, twenty-five dollars (\$25.00).
- (2) For filing a certificate of amendment to a certificate of assumed business name, ten dollars (\$10.00).
- (3) For filing a certificate of cancellation of a certificate of assumed business name, no charge.
- (4) For issuance of certified copies and certificates of fact concerning filing of certificates of assumed business name and related documents, fees as provided in section 67-910, Idaho Code. [I.C., § 53-510, as added by 1996, ch. 218, § 2, p. 718; am. 2003, ch. 223, § 2, p. 575.]

STATUTORY NOTES

Effective Dates. — This section became effective January 1, 1997, as provided in § 5 of S.L. 1996, ch. 218. See *Effective Dates*, § 53-501.

Section 4 of S.L. 2003, ch. 223 declared an emergency. Approved April 4, 2003.

53-511. Dates of coverage — Transition. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 53-511, as added by 1996, ch. 218, § 2, p. 718, was repealed by S.L. 2003, ch. 223, § 3.

CHAPTER 6

**IDAHO LIMITED LIABILITY COMPANY ACT
[REPEALED EFFECTIVE JULY 1, 2010]**

SECTION.

- 53-601. Definitions. [Repealed, effective July 1, 2010.]
- 53-602. Name. [Repealed, effective July 1, 2010.]
- 53-603. Reservation of name. [Repealed, effective July 1, 2010.]
- 53-604. [Repealed.]

SECTION.

- 53-605. Nature of business. [Repealed, effective July 1, 2010.]
- 53-606. [Repealed.]
- 53-607. Formation. [Repealed, effective July 1, 2010.]
- 53-608. Articles of organization. [Repealed, effective July 1, 2010.]

SECTION.

- 53-609. Amendment of articles of organization — Restatement. [Repealed, effective July 1, 2010.]
- 53-610. Execution of documents. [Repealed, effective July 1, 2010.]
- 53-611. Filing with the secretary of state. [Repealed, effective July 1, 2010.]
- 53-612. Effect of filing of articles of organization. [Repealed, effective July 1, 2010.]
- 53-613. Annual report of domestic and foreign limited liability companies. [Repealed, effective July 1, 2010.]
- 53-614. [Repealed.]
- 53-615. Professional service limited liability companies. [Repealed, effective July 1, 2010.]
- 53-616. Agency power of members and managers. [Repealed, effective July 1, 2010.]
- 53-617. Admission of members and managers. [Repealed, effective July 1, 2010.]
- 53-618. Limited liability company charged with knowledge of or notice to member or manager. [Repealed, effective July 1, 2010.]
- 53-619. Liability of members to third parties. [Repealed, effective July 1, 2010.]
- 53-620. Parties to actions. [Repealed, effective July 1, 2010.]
- 53-621. Management. [Repealed, effective July 1, 2010.]
- 53-622. Duties of managers and members. [Repealed, effective July 1, 2010.]
- 53-623. Voting. [Repealed, effective July 1, 2010.]
- 53-624. Limitation of liability and indemnification of members and managers. [Repealed, effective July 1, 2010.]
- 53-625. Records and information. [Repealed, effective July 1, 2010.]
- 53-626. Contributions to capital. [Repealed, effective July 1, 2010.]
- 53-627. Liability for contributions. [Repealed, effective July 1, 2010.]
- 53-628. Sharing of profits. [Repealed, effective July 1, 2010.]
- 53-629. Sharing of interim distributions. [Repealed, effective July 1, 2010.]
- 53-630. Distributions on an event of dissociation. [Repealed, effective July 1, 2010.]
- 53-631. Distribution in kind. [Repealed, effective July 1, 2010.]
- 53-632. Right to distribution. [Repealed, effective July 1, 2010.]
- 53-633. Ownership of limited liability com-

SECTION.

- pany property. [Repealed, effective July 1, 2010.]
- 53-634. Transfer of property. [Repealed, effective July 1, 2010.]
- 53-635. Nature of limited liability company interest. [Repealed, effective July 1, 2010.]
- 53-636. Assignment of limited liability company interest. [Repealed, effective July 1, 2010.]
- 53-637. Rights of judgment creditor. [Repealed, effective July 1, 2010.]
- 53-638. Right of assignee to become a member. [Repealed, effective July 1, 2010.]
- 53-639. Powers of estate of a deceased or incompetent member. [Repealed, effective July 1, 2010.]
- 53-640. Admission of members. [Repealed, effective July 1, 2010.]
- 53-641. Events of dissociation. [Repealed, effective July 1, 2010.]
- 53-642. Dissolution. [Repealed, effective July 1, 2010.]
- 53-643. Judicial dissolution. [Repealed, effective July 1, 2010.]
- 53-643A. Grounds for administrative dissolution. [Repealed, effective July 1, 2010.]
- 53-643B. Procedure for and effect of administrative dissolution. [Repealed, effective July 1, 2010.]
- 53-643C. Reinstatement following administrative dissolution. [Repealed, effective July 1, 2010.]
- 53-644. Winding up. [Repealed, effective July 1, 2010.]
- 53-645. Agency power of managers or members after dissolution. [Repealed, effective July 1, 2010.]
- 53-646. Distribution of assets. [Repealed, effective July 1, 2010.]
- 53-647. Articles of dissolution. [Repealed, effective July 1, 2010.]
- 53-648. Known claims against dissolved limited liability company. [Repealed, effective July 1, 2010.]
- 53-649. Unknown claims against dissolved limited liability company. [Repealed, effective July 1, 2010.]
- 53-650. Law governing foreign limited liability companies. [Repealed, effective July 1, 2010.]
- 53-651. Registration. [Repealed, effective July 1, 2010.]
- 53-652. Issuance of registration. [Repealed, effective July 1, 2010.]
- 53-653. Name of foreign limited liability company. [Repealed, effective July 1, 2010.]
- 53-654. Amendments. [Repealed, effective July 1, 2010.]
- 53-655. Voluntary cancellation of registra-

SECTION.

- tion. [Repealed, effective July 1, 2010.]
- 53-655A. Administrative cancellation of registration. [Repealed, effective July 1, 2010.]
- 53-655B. Procedure for and effect of administrative cancellation. [Repealed, effective July 1, 2010.]
- 53-655C. Appeal from administrative cancellation. [Repealed, effective July 1, 2010.]
- 53-656. Transaction of business without registration. [Repealed, effective July 1, 2010.]
- 53-657. Transactions not constituting transacting business. [Repealed, effective July 1, 2010.]
- 53-658. Suits by and against the limited liability company. [Repealed, effective July 1, 2010.]
- 53-659. Authority to sue on behalf of limited liability company. [Repealed, effective July 1, 2010.]
- 53-660. Effect of lack of authority to sue. [Repealed, effective July 1, 2010.]
- 53-660A. Applicability of Idaho entity transactions act. [Repealed, effective July 1, 2010.]

SECTION.

- 53-661. Merger or consolidation. [Repealed, effective July 1, 2010.]
- 53-662. Approval of merger or consolidation. [Repealed, effective July 1, 2010.]
- 53-663. Articles of merger or consolidation. [Repealed, effective July 1, 2010.]
- 53-664. Effects of merger or consolidation. [Repealed, effective July 1, 2010.]
- 53-665. Filing, service, and copying fees. [Repealed, effective July 1, 2010.]
- 53-666. Execution by judicial act. [Repealed, effective July 1, 2010.]
- 53-667. Definition of knowledge. [Repealed, effective July 1, 2010.]
- 53-668. Rules of construction. [Repealed, effective July 1, 2010.]
- 53-669. Jurisdiction of the district courts. [Repealed, effective July 1, 2010.]
- 53-670. Severability. [Repealed, effective July 1, 2010.]
- 53-671. Interstate application. [Repealed, effective July 1, 2010.]
- 53-672. Governing law. [Repealed, effective July 1, 2010.]

STATUTORY NOTES

Compiler's Notes. — This chapter is repealed effective July 1, 2010, pursuant to S.L. 2008, ch. 176, §§ 5, 6. See § 30-6-1104.

53-601. Definitions. [Repealed, effective July 1, 2010.] — As used in this chapter, unless the context otherwise requires:

(1) "Articles of organization" mean articles filed under section 53-607, Idaho Code, and those articles as amended or restated.

(2) "Corporation" means a corporation formed under the laws of any state or foreign country.

(3) "Court" includes every court having jurisdiction in the case.

(4) "Event of dissociation" means an event that causes a person to cease to be a member as provided in section 53-641, Idaho Code.

(5) "Foreign limited liability company" means an organization that is:

(a) An unincorporated association;

(b) Organized under laws of a state other than the laws of this state, or under the laws of any foreign country;

(c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) Not required to be registered or organized under any statute of this state other than the provisions of this chapter.

(6) “Limited liability company” or “domestic limited liability company” means an organization formed under the provisions of this chapter.

(7) “Limited liability company interest” or “interest in the limited liability company” means the interest that can be assigned under section 53-636, Idaho Code, and charged under section 53-637, Idaho Code.

(8) “Limited partnership” means a limited partnership formed under the laws of any state or foreign country.

(9) “Manager” means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with section 53-621, Idaho Code.

(10) “Member” means a person or persons who have been admitted to membership in a limited liability company as provided in section 53-640, Idaho Code, and who have not ceased to be members as provided in section 53-641, Idaho Code.

(11) “Operating agreement” means any agreement, written or oral, among all of the members as to the conduct of the business and affairs of a limited liability company.

(12) “Person” means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.

(13) “State” means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico. [I.C., § 53-601, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 5, p. 916.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

ANALYSIS

Breach of fiduciary duty.
Manager.

Breach of Fiduciary Duty.

Former member’s claim of breach of a limited liability company operating agreement was improperly dismissed on summary judgment in part, under § 30-6-409, because there were disputed facts as to whether the remaining members acted in bad faith or in breach of fiduciary duties in terminating the former member. *Bushi v. Sage Health Care, PLLC*, — Idaho —, 203 P.3d 694 (2009).

Manager.

Since manager was the only member of predecessor LLC, there was an implicit operating agreement that he was the manager of the company. He was also a member of the successor LLC, which was merely an amendment of the predecessor, not a completely new company. *Estate of E. A. Collins v. Geist*, 143 Idaho 821, 153 P.3d 1167 (2007).

RESEARCH REFERENCES

A.L.R. — Construction and application of limited liability company acts. 79 A.L.R.5th 689.

53-602. Name. [Repealed, effective July 1, 2010.] — (1) The name of each limited liability company as set forth in its articles of organization must contain the words “Limited Liability Company” or “Limited Company” or the abbreviation “L.L.C.,” “L.C.,” “LLC” or “LC.” The word “Limited” may be abbreviated as “Ltd.” and the word “Company” may be abbreviated as “Co.” If the limited liability company, however, is a professional services limited liability company as defined in section 53-615, Idaho Code, the name of the limited liability company as set forth in the articles of organization must end with the words “Professional Company” or the abbreviation “P.L.L.C.” or “PLLC.”

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) The name of any limited liability company, limited partnership or corporation existing under the laws of this state or authorized to transact business in this state; or

(b) Any name reserved or registered under section 53-603, Idaho Code, the general corporation laws or the Idaho limited partnership act.

(3) The provisions of subsection (2) of this section shall not apply if the applicant files with the secretary of state either of the following:

(a) The written consent of the holder of a reserved or registered name to use a deceptively similar name if one (1) or more words are added, altered or deleted to make the name distinguishable from the reserved or registered name; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(4) A limited liability company name may not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted by section 53-605, Idaho Code, and its articles of organization. The name shall not falsely state or imply government affiliation. [I.C., § 53-602, as added by 1993, ch. 224, § 1, p. 760; am. 1995, ch. 126, § 26, p. 542; am. 1999, ch. 212, § 6, p. 563; am. 2005, ch. 272, § 5, p. 836.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-603. Reservation of name. [Repealed, effective July 1, 2010.] — (1) The exclusive right to use a name may be reserved by:

(a) Any person intending to organize a limited liability company and to adopt that name;

(b) Any limited liability company or any foreign limited liability company registered in this state that intends to adopt that name;

(c) Any foreign limited liability company intending to register in this state and to adopt that name; or

(d) Any person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of four (4) months from and after the date the application is filed with the secretary of state.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of four (4) months each from the date of the renewal under the same conditions that the holder of a reserved corporate name may renew a corporate name reservation.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved. [I.C., § 53-603, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-604. Registered office and registered agent. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 53-604, as added by 1993, ch. 224, § 1, p. 760; am. 1996, ch. 395, § 1, p. 1323; am. 1998, ch. 268, § 1, p. 887; am. 2000, ch. 124, § 5, p. 291, was repealed by S.L. 2007, ch. 314, § 65. See § 30-401 et seq.

53-605. Nature of business. [Repealed, effective July 1, 2010.] —

(1) A limited liability company may be organized under this chapter for any lawful purpose. If the purpose for which a limited liability company is organized or its activities make it subject to a special provision of law, the limited liability company shall also comply with that provision.

(2) Except as limited in the articles of organization or operating agreement, the limited liability company shall have and exercise all powers necessary or convenient to effect its purposes including the power to render professional services, if each member of a limited liability company who renders professional services in Idaho is licensed or registered to render those professional services pursuant to applicable Idaho law and section 53-615, Idaho Code. [I.C., § 53-605, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 2, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-606. Service of process. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised I.C., § 53-606, as added by 1993, ch. 224, § 1, p. 760, was repealed by S.L. 2007, ch. 314, § 65. See § 30-401 et seq.

53-607. Formation. [Repealed, effective July 1, 2010.] — One (1) or more persons may form a limited liability company by signing articles of organization and delivering the signed articles to the secretary of state for filing. The person or persons who form a limited liability company need not be members of the limited liability company at the time of formation or after formation has occurred. [I.C., § 53-607, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-608. Articles of organization. [Repealed, effective July 1, 2010.] — The articles of organization shall be set forth in a form prescribed by the secretary of state:

- (1) A name for the limited liability company that satisfies the requirements of section 53-602, Idaho Code;
- (2) The information required by section 30-405(1), Idaho Code;
- (3) If management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (4) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;
- (5) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company;
- (6) If the limited liability company is a professional service limited liability company, the principal profession for which members are duly licensed or otherwise legally authorized to render professional services. [I.C., § 53-608, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 6, p. 916; am. 1997, ch. 151, § 5, p. 429; am. 1998, ch. 268, § 3, p. 887; am. 2000, ch. 124, § 6, p. 291; am. 2007, ch. 314, § 66, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (2), which formerly read: "The street address of the registered office and the name of the registered agent at that address, as required to be maintained by the provisions of section 53-604, Idaho Code."

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

Effective Dates. — Section 9 of S.L. 2000, ch. 124 provided that this section shall be in full force and effect on and after July 1, 2000.

53-609. Amendment of articles of organization — Restatement. [Repealed, effective July 1, 2010.] — (1) The articles of organization of a limited liability company may be amended by filing articles of amendment with the secretary of state. The articles of amendment shall set forth:

- (a) The name of the limited liability company;
- (b) The date the articles of organization were filed; and
- (c) The amendment to the articles of organization.

(2) The articles of organization may be amended in any respect as may be desired, so long as the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment and the amendments are in a form prescribed by the secretary of state.

(3) Articles of organization may be restated at any time. Restated articles of organization shall be filed with the secretary of state and shall be specifically designated as such in the heading, shall state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, its former name and the date of the filing of its articles of organization. The restated articles of the organization shall be in a form prescribed by the secretary of state. [I.C., § 53-609, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-610. Execution of documents. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in any other section of this chapter, any document required by the provisions of this chapter to be filed with the secretary of state shall be executed:

- (a) If management of the limited liability company is vested in one (1) or more managers, by any manager;
- (b) If management of the limited liability company is reserved to the members, by any member;
- (c) If the limited liability has not been formed, by the person or persons forming the limited liability company; or
- (d) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state beneath or opposite his signature the person's name and the capacity in which he signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document need not be provided to or filed with the secretary of state. [I.C., § 53-610, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-611. Filing with the secretary of state. [Repealed, effective July 1, 2010.] — The original signed copy, together with a duplicate copy that may be either a signed, photocopied or conformed copy, of the articles of organization or any other document required to be filed pursuant to this chapter, shall be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, it shall, when all required filing fees have been paid:

(1) Endorse on each signed original and duplicate copy the word “filed” and the date and time of the document’s acceptance for filing;

(2) Retain the signed original in the secretary of state’s files; and

(3) Return the duplicate copy to the person who filed it or to the person’s representative. [I.C., § 53-611, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-612. Effect of filing of articles of organization. [Repealed, effective July 1, 2010.] — Each copy of the articles of organization stamped “filed” and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under the provisions of this chapter. [I.C., § 53-612, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-613. Annual report of domestic and foreign limited liability companies. [Repealed, effective July 1, 2010.] — (1) Each domestic limited liability company, and each foreign limited liability company authorized to do business in this state, shall file an annual report setting forth:

(a) The name of the limited liability company and the state or country under the laws of which it is organized;

(b) The information required by section 30-405(1), Idaho Code;

(c) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the current members of the limited liability company;

(d) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the current managers of the limited liability company.

(2) Such annual report shall be made on a form prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed for the limited liability company by a person authorized by the members if management is vested in the members, or by a person authorized by the

managers if management is vested in the managers. Execution by such a person constitutes a representation that the authority was granted. If the limited liability company is in the hands of a receiver or trustee, it shall be executed on behalf of the limited liability company by such receiver or trustee.

(3) The annual report of a domestic or foreign limited liability company shall be delivered to the secretary of state each year before the end of the month during which a domestic limited liability company was initially organized, or a foreign limited liability company was initially authorized to transact business. Beginning one (1) year after a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business, and each year thereafter, the annual report of the limited liability company must be received in the office of the secretary of state not later than the close of business on the final day of the applicable month. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the limited liability company for any necessary corrections.

(4) Annual reports may be filed electronically by domestic or foreign limited liability companies by following the online filing instructions provided by the secretary of state. [I.C., § 53-613, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 7, p. 916; am. 1995, ch. 126, § 27, p. 542; am. 1996, ch. 395, § 2, p. 1323; am. 1998, ch. 268, § 4, p. 887; am. 1999, ch. 210, § 3, p. 559; am. 2003, ch. 207, § 3, p. 550; am. 2005, ch. 274, § 3, p. 842; am. 2007, ch. 314, § 67, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (1)(b), which formerly read: “The address of the registered office of the limited liability company in this state, and the name of its registered agent in

this state at such address, and the address of its principal office.”

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-614. Involuntary cancellation of articles of organization or registration as a foreign limited liability company. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 53-614, as added by 1993, ch. 224, § 1, p. 760; am. 1996, ch. 395, § 3, p.

1323, was repealed by S.L. 1998, ch. 268, § 5, p. 887 effective July 1, 1998.

53-615. Professional service limited liability companies. [Repealed, effective July 1, 2010.] — (1) One (1) or more persons duly licensed or otherwise legally authorized to render the same or allied professional services within this state or professional corporations, partnerships or limited liability companies all of whose shareholders, partners or members are duly licensed or otherwise legally authorized to render the same or allied professional services within this state may organize and

become a professional company under the provisions of this chapter for the sole and specific purpose of rendering the same and specific professional service, allied professional services and services ancillary to the professional services. This section shall not be deemed to authorize allied professional services where the laws pertaining to specific professions or the codes of ethics or professional responsibility of any of the professions involved in such a proposed professional company prohibit such a combination of professional services.

(2) No professional company may render professional services in this state except through its managers, members, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. The term "employee" as used in this chapter does not include clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(3) Nothing contained in this section shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services and to the standards for professional conduct. Any manager, member, agent or employee of a professional company organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the professional company to the person for whom such professional services were being rendered. The professional company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its managers, members, agents or employees while they are engaged on behalf of the professional company in the rendering of professional services.

The relationship of a person whether as an individual, shareholder or a professional corporation, partner of a partnership or member of a professional company to a professional company organized under the provisions of this chapter, with which such person is associated, whether as manager, member or employee, shall in no way modify or diminish the jurisdiction over him of the governmental authority or state agency which licensed, certified or registered him for a particular profession.

(4) No professional company may offer membership to or accept as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the company was organized or professional corporations, partnerships or limited liability companies all of whose shareholders, partners or members are duly licensed or otherwise legally authorized to render the same specific professional services as those for which the professional company was organized. No member of a professional company shall enter into a voting trust agreement or any other type of agreement vesting another person with the authority to exercise the voting power of his membership.

(5) If any manager, member, agent or employee of a professional company who has been rendering professional services within this state or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall cease to be a member in such professional company in accordance with the provisions of subsection (1)(k) of section 53-641, Idaho Code, and the remaining members of the professional company shall take such action as is required to terminate such membership.

(6) No member of a professional company may sell or transfer his membership in such professional company except to another individual, professional corporation, partnership or limited liability company eligible to be a member of such professional company and except pursuant to the provisions of section 53-638, Idaho Code.

(7) The provisions of this section shall not be considered as repealing, modifying or restricting the applicable provisions of law regulating the several professions except insofar as such laws conflict with the provisions of this section.

(8) As used in this section:

(a) The term "professional service" means any type of service to the public which can be rendered by a member of any profession within the purview of his profession. For the purpose of this chapter, the professions shall be held to include the practices of architecture, chiropractic, dentistry, engineering, landscape architecture, law, medicine, nursing, occupational therapy, optometry, physical therapy, podiatry, professional geology, psychology, certified or licensed public accountancy, social work, surveying, and veterinary medicine, and no others.

(b) The term "professional company" means a limited liability company organized under the provisions of this chapter for the sole and specific purpose of rendering professional service and which has as its members only natural persons who themselves are duly licensed or otherwise legally authorized to render one (1) or more of the same professional services as the professional company.

(c) The term "allied professional services" means professional services which are so related in substance that they are frequently offered in conjunction with one another as parts of the same service package to the consumer. [I.C., § 53-615, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 8, p. 916; am. 2002, ch. 218, § 1, p. 596.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Real Estate Agents.

Including real estate agents as rendering professional services would be inconsistent with the legislative intent in establishing a definition of professional services where a

real estate agent only had to have a high school equivalent degree and pass a 90-hour classroom or correspondence course, and in order for a service to be professional, it had to be comparable to those occupations listed in

terms of specialized higher education.
Sumpter v. Holland Realty, Inc., 140 Idaho
349, 93 P.3d 680 (2004).

53-616. Agency power of members and managers. [Repealed, effective July 1, 2010.] — (1) Except as provided in subsection (2) of this section or as provided in the articles of organization, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) No member, solely by reason of being a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member which is not apparently for the carrying on in the usual way the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with an operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction. [I.C., § 53-616, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Normal Business or Affairs.

Manager of LLC had apparent authority to bind LLC when he sold real estate lots, as this

was part of the normal business or affairs of the company. Estate of E. A. Collins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

53-617. Admission of members and managers. [Repealed, effective July 1, 2010.] — (1) Except as provided in subsection (2) of this section, an admission or representation made by any member concerning the business or affairs of a limited liability company within the scope of his authority as provided for in this chapter is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority as provided for in this chapter is evidence against the limited liability company; and

(b) The admission or representation of any member, acting solely in the capacity of a member, shall not constitute evidence against the limited liability company. [I.C., § 53-617, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-618. Limited liability company charged with knowledge of or notice to member or manager. [Repealed, effective July 1, 2010.] —

(1) Except as provided in subsection (2) of this section, notice to any member of any matter relating to the business or affairs of the limited liability company, and the knowledge of the member acting in the particular matter, acquired while a member or known at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(2) If the articles of organization provide that management of the liability company is vested in a manager or managers:

(a) Notice to any manager of any matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or known at the time of becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated the knowledge to the acting manager, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(b) Notice to or knowledge of any member of a limited liability company while the member is acting solely in the capacity of a member is not notice to or knowledge of the limited liability company. [I.C., § 53-618, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-619. Liability of members to third parties. [Repealed, effective July 1, 2010.] — A person who is a member of a limited liability company is not liable, solely by reason of being a member, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company. [I.C., § 53-619, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Applicability.

Idaho Code § 53-619 merely provided that members of limited liability companies were not liable for debts of the limited liability company solely by reason of being a member. However, the district court found that a de-

fendant, who had signed an agreement with a creditor, had personally incurred a debt for goods and services provided to the limited liability company. *J.R. Simplot Co. v. Bosen*, 144 Idaho 611, 167 P.3d 748 (2006).

53-620. Parties to actions. [Repealed, effective July 1, 2010.] — A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company or as otherwise provided in an operating agreement. [I.C., § 53-620, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-621. Management. [Repealed, effective July 1, 2010.] — (1) Unless an operating agreement vests management of the limited liability company in a manager or managers, management of the business or affairs of the limited liability company shall be vested in the members. Subject to any provisions in an operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(2) If an operating agreement vests management of the limited liability company in one (1) or more managers, then the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company except to the extent otherwise provided in an operating agreement. Unless otherwise provided in an operating agreement, managers:

- (a) Shall be designated, appointed, elected, removed or replaced by a vote, approval or consent of more than one-half (1/2) by numbers of the members;
- (b) Need not be members of the limited liability company or natural persons; and
- (c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified. [I.C., § 53-621, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Operating Agreement.

Since manager was the only member of predecessor LLC, there was an implicit operating agreement that he was the manager of the company. He was also a member of the

successor LLC, which was merely an amendment of the predecessor, not a completely new company. *Estate of E. A. Collins v. Geist*, 143 Idaho 821, 153 P.3d 1167 (2007).

53-622. Duties of managers and members. [Repealed, effective July 1, 2010.] — Unless otherwise provided in an operating agreement:

(1) A member or manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company, from:

- (a) Any transaction connected with the conduct or winding up of the limited liability company; or
- (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.

(3) One who is a member of a limited liability company in which management is vested in managers under section 53-621, Idaho Code, and who is not a manager shall have no duties to the limited liability company

or to the other members solely by reason of acting in the capacity of a member. [I.C., § 53-622, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

ANALYSIS

Breach of fiduciary duty.
Willful misconduct.

Breach of Fiduciary Duty.

Former member's claim of breach of a limited liability company operating agreement was improperly dismissed on summary judgment in part because there were disputed facts as to whether the remaining members acted in bad faith or in breach of fiduciary duties in terminating the former member. *Bushi v. Sage Health Care, PLLC*, — Idaho —, 203 P.3d 694 (2009).

pany in the construction business actively solicited business away from the company for his own personal benefit, there was sufficient evidence showing that his actions amounted to willful misconduct for purposes of establishing his liability. The district court erred in granting a directed verdict with respect to the company's willful misconduct claim. *Todd v. Sullivan Constr. LLC*, — Idaho —, 191 P.3d 196 (2008).

Willful Misconduct.

Where a member of a limited liability com-

53-623. Voting. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in an operating agreement or this chapter, and subject to subsection (2) of this section, the affirmative vote, approval or consent of more than one-half (1/2) by number of the members, if management of the limited liability company is vested in the members, or of the managers if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business of the limited liability company.

(2) Unless otherwise provided in writing in an operating agreement, the affirmative vote, approval or consent of all members shall be required to:

- (a) Amend a written operating agreement; or
- (b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business or affairs of the limited liability company or the conduct thereof. [I.C., § 53-623, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-624. Limitation of liability and indemnification of members and managers. [Repealed, effective July 1, 2010.] — An operating agreement may:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in section 53-622, Idaho Code; and

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager. [I.C., § 53-624, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-625. Records and information. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in writing in an operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) A copy of the articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the articles of amendment have been executed;

(c) Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local tax returns for the period;

(d) Copies of any effective written operating agreements, and all amendments thereto, and copies of any written operating agreements no longer in effect;

(e) Unless contained in writing in an operating agreement:

(i) A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made by each member;

(ii) A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and

(iii) Other writings prepared pursuant to a requirement, if any, in an operating agreement.

(2) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, wherever the record is located.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all things

affecting the business or affairs of the limited liability company to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company. [I.C., § 53-625, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-626. Contributions to capital. [Repealed, effective July 1, 2010.] — A limited liability company interest may be issued in exchange for cash, property, services rendered, guarantee of an obligation of the limited liability company, a promissory note or other obligation to contribute cash or property or to perform services, or other valuable consideration. [I.C., § 53-626, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Credit.

Use of manager's credit to obtain construction loans was sufficient consideration for an

interest in a limited liability company. *Estate of E. A. Collins v. Geist*, 143 Idaho 821, 153 P.3d 1167 (2007).

53-627. Liability for contributions. [Repealed, effective July 1, 2010.] — (1) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or other reason.

(3) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(4) Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members. [I.C., § 53-627, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-628. Sharing of profits. [Repealed, effective July 1, 2010.] — Unless otherwise provided in writing in an operating agreement, each member shall be repaid that member's contributions to capital and share on a per capita basis the profits and assets remaining after all liabilities, including those to members, are satisfied. [I.C., § 53-628, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 9, p. 916.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-629. Sharing of interim distributions. [Repealed, effective July 1, 2010.] — Except as otherwise provided in sections 53-630 and 53-646, Idaho Code, distributions of cash or other assets of a limited liability company shall be shared among the members and among classes of members in the manner provided in writing in an operating agreement. If an operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement or at the times determined by the members or managers pursuant to section 53-623, Idaho Code. [I.C., § 53-629, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-630. Distributions on an event of dissociation. [Repealed, effective July 1, 2010.] — Unless otherwise provided in writing in an operating agreement, if a member dissociates from a limited liability company without resulting in a dissolution under section 53-642, Idaho Code;

(1) And if the member is removed as a member pursuant to section 53-641(c), Idaho Code, then the member shall receive within a reasonable time after dissociation the fair value of the member's interest in the limited liability company as of the date of dissociation the limited liability company as if the limited liability company were wound up as of that date;

(2) And if the event of dissociation is other than removal pursuant to section 53-641(c), Idaho Code, the member shall be treated as an assignee

from the date of dissociation. [I.C., § 53-630, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 10, p. 916.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-631. Distribution in kind. [Repealed, effective July 1, 2010.] — Unless otherwise provided in an operating agreement:

(1) A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the limited liability company in any form other than cash; and

(2) A member may not be compelled to accept from the limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the property at the time of distribution. [I.C., § 53-631, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-632. Right to distribution. [Repealed, effective July 1, 2010.] — At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. [I.C., § 53-632, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-633. Ownership of limited liability company property. [Repealed, effective July 1, 2010.] — (1) Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

(2) Property may be acquired, held and conveyed in the name of the limited liability company. Any interest in real property may be acquired in the name of the limited liability company, and title to any interest so acquired shall vest in the limited liability company rather than in the members individually. [I.C., § 53-633, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-634. Transfer of property. [Repealed, effective July 1, 2010.] —

(1) Except as provided in subsection (5) of this section, property of the limited liability company held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Property of the limited liability company that is held in the name of one (1) or more members or managers with an indication in the instrument transferring the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

(3) Property transferred under subsections (1) and (2) of this section may be recovered by the limited liability company if it proves that the execution of the instrument of transfer did not bind the limited liability company under section 53-616, Idaho Code, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Property of the limited liability company held in the name of one (1) or more persons other than the limited liability company without an indication in the instrument transferring to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of the limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) A member, solely by reason of being a member, shall not have authority to transfer property of the limited liability company. [I.C., § 53-634, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Authority of Manager.

Manager of LLC had apparent authority to bind LLC when he sold real estate lots, as this

was part of the normal business or affairs of the company. *Estate of E. A. Collins v. Geist*, 143 Idaho 821, 153 P.3d 1167 (2007).

53-635. Nature of limited liability company interest. [Repealed, effective July 1, 2010.] — A limited liability company interest is personal property. [I.C., § 53-635, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-636. Assignment of limited liability company interest. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in writing in an operating agreement:

- (a) A limited liability company interest is assignable in whole or in part;
 - (b) An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
 - (c) An assignment of a limited liability company interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;
 - (d) Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to subsection (1)(c)(ii) of section 53-641, Idaho Code;
 - (e) Until an assignee of a limited liability company interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and
 - (f) The assignor of a limited liability company interest is not released from his liability as a member solely as a result of the assignment.
- (2) An operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.
- (3) Unless otherwise provided in an operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the limited liability company interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member. [I.C., § 53-636, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-637. Rights of judgment creditor. [Repealed, effective July 1, 2010.] — On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's limited liability company interest. The charging order is the exclusive remedy by which a judgment creditor of the member or transferee may satisfy a judgment against the member's interest in a limited liability company. The provisions of this chapter do not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest. [I.C., § 53-637, as added by 1993, ch. 224, § 1, p. 760; am. 2005, ch. 111, § 1, p. 362.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-638. Right of assignee to become a member. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in writing in an operating agreement, an assignee of a limited liability company interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by the member.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and the provisions of this chapter. An assignee who becomes a member also is liable for any obligations of the assignor to make contributions under section 53-627, Idaho Code. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from any written records of the limited liability company kept pursuant to section 53-625, Idaho Code.

(3) Unless otherwise provided in writing in an operating agreement, an assignor is not released from his liability to the limited liability company under section 53-627, Idaho Code, whether or not an assignee of a limited liability company interest becomes a member.

(4) Unless otherwise provided in writing in an operating agreement, a member who assigns his entire limited liability company interest ceases to be a member or to have the power to exercise any rights of a member when the assignee becomes a member with respect to the entire assigned interest. [I.C., § 53-638, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-639. Powers of estate of a deceased or incompetent member. **[Repealed, effective July 1, 2010.]** — If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or property, the member’s executor, administrator, guardian, conservator or other legal representative shall have all of the rights of an assignee of the member’s interest. [I.C., § 53-639, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-640. Admission of members. **[Repealed, effective July 1, 2010.]**
 — (1) Subject to subsection (2) of this section, a person may become a member in a limited liability company:
 (a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with an operating agreement or, if an operating agreement does not so provide in writing, upon the written consent of all members; and
 (b) In the case of an assignee of a limited liability company interest, as provided in section 53-638, Idaho Code.
 (2) The effective time of admission of a member to a limited liability company shall be the later of:
 (a) The date the limited liability company is formed; or
 (b) The time provided in an operating agreement or, if no such time is provided therein, then when the person’s admission is reflected in the records of the limited liability company. [I.C., § 53-640, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

ANALYSIS

Operating agreement.
 Written consent.

Operating Agreement.
 Since manager was the only member of predecessor LLC, there was an implicit operating agreement that he was the manager of the company. Estate of E. A. Collins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

a limited liability company, that person is not prevented from becoming a member because he or she did not give written consent. Estate of E. A. Collins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

Written Consent.
 Where there is only one person involved in

53-641. Events of dissociation. [Repealed, effective July 1, 2010.]

— (1) A person ceases to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:

- (a) The member withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;
- (b) This member ceases to be a member of the limited liability company as provided in section 53-638, Idaho Code;
- (c) The member is removed as a member:

- (i) In accordance with an operating agreement; or
- (ii) Unless otherwise provided in writing in an operating agreement, when the member assigns all of his interest in the limited liability company, by an affirmative vote of a majority of the members who have not assigned their interests;

(d) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces to the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or if within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is an individual;

- (i) The member's death; or

- (ii) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his person or estate;

(g) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member

that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(i) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or forfeiture of its corporate powers or right to do business;

(j) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(k) In the case of a professional services limited liability company, restrictions or limitations are placed upon a member's ability to continue to render professional services as described in section 53-615(5), Idaho Code.

(2) The members may provide in writing in an operating agreement for other events the occurrence of which shall result in a person ceasing to be a member of the limited liability company.

(3) Unless an operating agreement provides in writing that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days' written notice to the other members, or such other notice as is provided for in writing in an operating agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the operating agreement. [I.C., § 53-641, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 6, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-642. Dissolution. [Repealed, effective July 1, 2010.] — A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the occurrence of events specified in writing in the articles of organization or an operating agreement;

(2) The written consent of all members;

(3) An event of dissociation of a member, unless:

- (a) The business of the limited liability company is continued by the consent of all the remaining members on or before the 90th day following the occurrence of any such event; or
- (b) Otherwise provided in writing in an operating agreement;
- (4) Entry of a decree of judicial dissolution under section 53-643, Idaho Code; or
- (5) Administrative dissolution by the secretary of state pursuant to section 53-643B, Idaho Code. [I.C., § 53-642, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 7, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-643. Judicial dissolution. [Repealed, effective July 1, 2010.] —

(1) On application by or for a member, the district court may decree dissolution of a limited liability company when it is established:

- (a) That the managers or members are deadlocked in the management of the limited liability company's affairs, and that irreparable injury to the limited liability company is being suffered or is threatened by reason thereof; or
- (b) That the acts of the managers or members in control of the limited liability company are illegal, oppressive or fraudulent and that irreparable injury to the limited liability company is being suffered or is threatened by reason thereof.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's business and affairs in accordance with section 53-644, Idaho Code, and the notification of claimants in accordance with sections 53-648 and 53-649, Idaho Code. The clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it. [I.C., § 53-643, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 8, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Appellate Review.

This section does not provide a standard of appellate review for judicial dissolution and winding up; therefore, the standard of review

for non-jury district court findings of fact and conclusions of law after such a dissolution is I.R.C.P. 52(a). *Johannsen v. Utterbeck*, — Idaho —, 196 P.3d 341 (2008).

53-643A. Grounds for administrative dissolution. [Repealed, effective July 1, 2010.] — The secretary of state may administratively dissolve a limited liability company under section 53-643B, Idaho Code, if:

(1) The limited liability company does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The limited liability company is without a registered agent in this state for sixty (60) days or more; or

(3) The secretary of state has credible information that the limited liability company has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent has been changed or that its registered agent has resigned. [I.C., § 53-643A, as added by 1998, ch. 268, § 9, p. 887; am. 2007, ch. 314, § 68, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (2), deleted “or registered office” following “agent”; and in subsection (3), deleted “or registered office” following the first occurrence of “agent” and “or

that its registered office has been discontinued” from the end.

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-643B. Procedure for and effect of administrative dissolution. [Repealed, effective July 1, 2010.] — (1) If the secretary of state determines that one (1) or more grounds exist under section 53-643A, Idaho Code, for dissolving a limited liability company, he shall give notice of his determination to the limited liability company by first class mail addressed to its principal office as indicated on its most recent annual report or, if it has not yet filed an annual report, to its registered agent.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state shall administratively dissolve the limited liability company by noting the fact of dissolution and the effective date thereof in his records. The secretary of state shall give notice of the dissolution to the limited liability company by first class mail addressed to its principal office as indicated on its most recent annual report or, if it has not yet filed an annual report, to its registered agent.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 53-644, Idaho Code, and notify claimants under sections 53-648 and 53-649, Idaho Code.

(4) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent. [I.C., § 53-643B, as added by 1998, ch. 268, § 10, p. 887; am. 2007, ch. 314, § 69, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “registered agent” for “registered office” at the end of subsections (1) and (2).

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-643C. Reinstatement following administrative dissolution. [Repealed, effective July 1, 2010.] — (1) A limited liability company administratively dissolved under section 53-643B, Idaho Code, may apply to the secretary of state for reinstatement within ten (10) years after the effective date of dissolution. The application must:

- (a) Recite the name of the limited liability company at the time of its dissolution and the date of its organization;
- (b) State that the limited liability company applies for reinstatement;
- (c) State that the proposed name of the limited liability company satisfies the requirements of section 53-602, Idaho Code; and
- (d) Be accompanied by a current annual report or appointment of registered agent, as appropriate to the reason for administrative dissolution.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the dissolution and prepare a certificate of reinstatement that recites the fact and effective date of the reinstatement, file a copy thereof and return the original to the limited liability company.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred. [I.C., § 53-643C, as added by 1998, ch. 268, § 11, p. 887; am. 2000, ch. 325, § 5, p. 1095.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-644. Winding up. [Repealed, effective July 1, 2010.] — Unless otherwise provided in writing in an operating agreement:

(1) The business or affairs of the limited liability company may be wound up:

- (a) By the members or managers who have authority pursuant to section 53-621, Idaho Code, to manage the limited liability company prior to dissolution; or
- (b) If one (1) or more of such members or managers have engaged in wrongful conduct, or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

- (a) Prosecute and defend suits;
- (b) Settle and close the business of the limited liability company;
- (c) Dispose of and transfer the property of the limited liability company;
- (d) Discharge the liabilities of the limited liability company; and

(e) Distribute to the members any remaining assets of the limited liability company. [I.C., § 53-644, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Attorney Fees.

District court did not err in rejecting the request of a former member of a professional limited liability company, a law firm, to have his attorney fees held to be a debt of the firm;

no attorney ever appeared as counsel for the firm in the dissolution action and no defense was undertaken in the name of the firm. *Howard v. Perry*, 141 Idaho 139, 106 P.3d 465 (2005).

53-645. Agency power of managers or members after dissolution. [Repealed, effective July 1, 2010.] — (1) Except as provided in subsections (3), (4) and (5) of this section, after dissolution of the limited liability company, each of the members having authority to wind up the limited liability company's business and affairs can bind the limited liability company:

(a) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of subsection (1)(b) of this section.

(3) An act of a member which is not binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized by the limited liability company.

(4) An act of a member which would be binding under subsection (1) of this section or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager shall have the authority of a member provided for in subsection (1) of this section, and no member shall have such authority if the member is acting solely in the capacity of a member. [I.C., § 53-645, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-646. Distribution of assets. [Repealed, effective July 1, 2010.] — Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;

(2) Unless otherwise provided in writing in an operating agreement, to members or former members in satisfaction of liabilities for distributions under sections 53-629 and 53-630, Idaho Code; and

(3) Unless otherwise provided in writing in an operating agreement, to members and former members first for the return of their contributions and second in proportion to the members' respective rights to share in distributions from the limited liability company prior to dissolution. [I.C., § 53-646, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-647. Articles of dissolution. [Repealed, effective July 1, 2010.]

— After the dissolution of the limited liability company pursuant to subsection (1), (2) or (3) of section 53-642, Idaho Code, the limited liability company shall file articles of dissolution with the secretary of state which set forth:

(1) The name of the limited liability company;

(2) The date of filing of its articles of organization;

(3) The reason for filing the articles of dissolution; and

(4) Any other information the members or managers filing the certificate shall deem proper. [I.C., § 53-647, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 12, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-648. Known claims against dissolved limited liability company. [Repealed, effective July 1, 2010.] — (1) Upon dissolution, a limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to section 53-647, Idaho Code, and following the procedures described in this section.

(2) The limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days after the later of the date of the written notice or the filing of articles of dissolution pursuant to section 53-647, Idaho Code, by which the limited liability company must receive the claim; and

- (d) State that the claim will be barred if not received by the deadline.
- (3) A claim against the limited liability company is barred:
 - (a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the limited liability company by the deadline;
 - (b) If a claimant whose claim was rejected by the limited liability company does not commence a proceeding to enforce the claim within ninety (90) days after the date of the rejection notice.
- (4) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [I.C., § 53-648, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-649. Unknown claims against dissolved limited liability company. [Repealed, effective July 1, 2010.] — A claim not barred under section 53-648, Idaho Code, may be enforced:

- (1) Against the limited liability company, to the extent of its undistributed assets; or
- (2) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of his pro rata share of the claim or the assets of the limited liability company distributed to him in liquidation, whichever is less, but a member’s total liability for all claims under the provisions of this section may not exceed the total amount of assets distributed to him. [I.C., § 53-649, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-650. Law governing foreign limited liability companies. [Repealed, effective July 1, 2010.] — Subject to the constitution of this state, the laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members, except that professional companies rendering services in this state shall be subject to the laws of this state and the code of ethics or professional responsibility which are applicable to the professions in which such professional companies are rendering services in this state. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state. [I.C., § 53-650, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-651. Registration. [Repealed, effective July 1, 2010.] — Before transacting business in this state, a foreign limited liability company shall register with the secretary of state by submitting to the secretary of state an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall be prescribed by the secretary of state and set forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(2) The state or other jurisdiction where formed, and date of its formation;

(3) The information required by section 30-405(1), Idaho Code;

(4) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company; and

(5) The application for registration of a foreign limited liability company shall be accompanied by a certificate from the filing officer in the jurisdiction of creation evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in section 53-601(5), Idaho Code. [I.C., § 53-651, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 11, p. 916; am. 2000, ch. 124, § 7, p. 291; am. 2007, ch. 314, § 70, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (3), which formerly read: "The name and street address of a registered agent for service of process required to be maintained by the provisions of section 30-405(1), Idaho Code."

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

Effective Dates. — Section 9 of S.L. 2000, ch. 124 provided that this section shall be in full force and effect on and after July 1, 2000.

53-652. Issuance of registration. [Repealed, effective July 1, 2010.] — If the secretary of state finds that an application for registration conforms to the provisions of this article and all requisite fees have been paid, the secretary shall:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(2) Retain the signed original in the secretary of state's files; and

(3) Return the duplicate copy to the person who filed it or the person's representative. [I.C., § 53-652, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-653. Name of foreign limited liability company. [Repealed, effective July 1, 2010.] — No certificate of registration shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of section 53-602, Idaho Code. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of section 53-602, Idaho Code, to obtain or maintain a certificate of registration the foreign limited liability company may use a designated name that is available, and which satisfies the requirements of section 53-602, Idaho Code. [I.C., § 53-653, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-654. Amendments. [Repealed, effective July 1, 2010.] — (1) The application for registration of a foreign limited liability company is amended by filing a notice of amendment with the secretary of state signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The notice of amendment shall be in a form prescribed by the secretary of state and set forth:

- (a) The name of the foreign limited liability company;
- (b) The date the original application for registration was filed; and
- (c) The amendment to the application for registration.

(2) The application for registration may be amended in any way, provided that the application for registration as amended contains only provisions that may be lawfully contained in an application for registration at the time of the amendment. [I.C., § 53-654, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-655. Voluntary cancellation of registration. [Repealed, effective July 1, 2010.] — (1) A foreign limited liability company authorized to transact business in this state may cancel its registration by filing with the secretary of state an application for cancellation, which shall set forth:

- (a) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;
- (b) That the foreign limited liability company is not transacting business in this state;

(c) That the foreign limited liability company surrenders its registration to transact business in this state;

(d) That the foreign limited liability company revokes the authority of its registered agent in this state and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such limited liability by service thereon in the manner provided in section 30-413(2), Idaho Code;

(e) A post-office address to which a copy of any process against the limited liability company may be served on it pursuant to the provisions of section 30-413, Idaho Code.

(2) The application for cancellation shall be in the form and manner designated by the secretary of state and shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. [I.C., § 53-655, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 12, p. 916; am. 1998, ch. 268, § 13, p. 887; am. 2007, ch. 314, § 71, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, updated the section reference in subsections (1)(d) and (1)(e); and in subsection (1)(d), deleted “for service of process” following “agent.”

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-655A. Administrative cancellation of registration. [Repealed, effective July 1, 2010.] — The secretary of state may commence a proceeding under section 53-655B, Idaho Code, to administratively cancel the registration of a foreign limited liability company authorized to transact business in this state if:

(1) The foreign limited liability company does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The foreign limited liability company is without a registered agent in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the foreign limited liability company has failed to notify the secretary of state within sixty (60) days of the occurrence that its registered agent has changed or that its registered agent has resigned;

(4) The secretary of state has credible information that a member or manager of the foreign limited liability company signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(5) The secretary of state receives a duly authenticated certificate from the official having custody of the records of limited liability companies in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or has disappeared as a result

of a merger. [I.C., § 53-655A, as added by 1998, ch. 268, § 14, p. 887; am. 2007, ch. 314, § 72, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, in subsection (2), deleted “or registered office” following “agent”; and in subsection (3), deleted “or registered office” following the first occurrence of “agent” and “or

that its registered office has been discontinued” from the end.

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-655B. Procedure for and effect of administrative cancellation. [Repealed, effective July 1, 2010.]

— (1) If the secretary of state determines that one (1) or more grounds exist under section 53-655A, Idaho Code, for administrative cancellation of registration, he shall give notice of his determination to the foreign limited liability company by first class mail addressed to its principal office as indicated on its most recent annual report or, if it has not yet filed an annual report, to its registered agent.

(2) If the foreign limited liability company does not correct each ground for administrative cancellation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state may cancel the foreign limited liability company’s registration by noting the fact of cancellation and the effective date thereof in his records. The secretary of state shall give notice of the cancellation to the foreign limited liability company by first class mail addressed to its principal office as indicated on its most recent annual report, or if it has not yet filed an annual report, to its registered agent.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the notice of administrative cancellation of its registration.

(4) Service of process on a foreign limited liability company whose registration has been administratively canceled may be made upon its registered agent, if any, or if there be none, by registered or certified mail, return receipt requested, to a member or manager listed on the most recent annual report, if any, or otherwise to the address of its office in the jurisdiction of its formation as disclosed on its application for registration.

(5) Cancellation of a foreign limited liability company’s registration does not terminate the authority of its registered agent. [I.C., § 53-655B, as added by 1998, ch. 268, § 15, p. 887; am. 2007, ch. 314, § 73, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, substituted “registered agent” for “registered office” at the end of subsections (1) and (2).

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-655C. Appeal from administrative cancellation. [Repealed, effective July 1, 2010.]

— (1) A foreign limited liability company may appeal the secretary of state’s cancellation of its registration to the fourth

district court, Ada county, Idaho, within thirty (30) days after receipt of the notice of cancellation. The foreign limited liability company appeals by petitioning the court to set aside the cancellation and attaching to the petition copies of its application for registration with the secretary of state's filing endorsement stamp and the notice of cancellation from the secretary of state.

(2) The court may summarily order the secretary of state to reinstate the registration or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings. [I.C., § 53-655C, as added by 1998, ch. 268, § 16, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-656. Transaction of business without registration. [Repealed, effective July 1, 2010.] — (1) A foreign limited liability company transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not:

- (a) Impair the validity of any contract or act of the foreign limited liability company;
- (b) Affect the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or
- (c) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of this state.

(3) A foreign limited liability company which transacts business in this state without registration shall be liable to the state for the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by the provisions of this chapter upon that foreign limited liability company had it duly registered, and all penalties imposed by the provisions of this chapter. The attorney general may bring proceedings to recover all amounts due this state under the provisions of this section.

(4) A foreign limited liability company which transacts business in this state without registration shall be subject to a civil penalty, payable to the state, not to exceed five thousand dollars (\$5,000).

(5) The civil penalty set forth in subsection (4) of this section may be recovered in an action brought within a court by the attorney general upon a finding by the court that a foreign limited liability company has transacted business in this state in violation of the provisions of this chapter. The court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transactions of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil

penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

(6) A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because the limited liability company transacted business in this state without registration.

(7) Foreign limited liability companies transacting business in Idaho prior to the effective date of this chapter, may register with the secretary of state in accordance with the provisions of section 53-651, Idaho Code, within two (2) months from the effective date of this chapter without any penalty under the provisions of section 53-656(4), Idaho Code. [I.C., § 53-656, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-657. Transactions not constituting transacting business. [Repealed, effective July 1, 2010.] — (1) The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter.

- (a) Maintaining or defending any action or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes;
- (b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or appointing and maintaining trustees or depositories with respect to those securities or interests;
- (e) Effecting sales through independent contractors;
- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance outside this state before they become contracts;
- (g) Creating as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;
- (h) Securing or collecting debts or enforcing any rights in property securing the same. The provisions of this subsection shall not be construed to allow any person or limited liability company to act in a manner contrary to the provisions of chapter 22, title 26, Idaho Code;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of a number of repeated transactions of a like nature; or
- (k) Transacting any business in interstate commerce.

(2) The foreign limited liability company shall not be considered to be transacting business solely because it:

- (a) Owns a controlling interest in a corporation that is transacting business;
- (b) Is a limited partner of a limited partnership that is transacting business; or
- (c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(3) The provisions of this section do not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state. [I.C., § 53-657, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Cited in: KEB Enters., L.P. v. Smedley, 140 Idaho 746, 101 P.3d 690 (2004).

53-658. Suits by and against the limited liability company. [Repealed, effective July 1, 2010.] — Suit may be brought by or against a limited liability company in its own name. [I.C., § 53-658, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-659. Authority to sue on behalf of limited liability company. [Repealed, effective July 1, 2010.] — Unless otherwise provided in an operating agreement, a suit on behalf of the limited liability company may be brought only in the name of the limited liability company by:

(1) One (1) or more members of a limited liability company, whether or not an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to sue by the vote of more than one-half (1/2) by number of the members eligible to vote thereon, unless the vote of all members shall be required pursuant to the provisions of section 53-623, Idaho Code, provided that in determining the vote required under the provisions of section 53-623, Idaho Code, the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or

(2) One (1) or more managers of a limited liability company, if an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to do so by the vote required

pursuant to the provisions of section 53-623, Idaho Code, of the members eligible to vote thereon, provided that in determining such required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded. [I.C., § 53-659, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-660. Effect of lack of authority to sue. [Repealed, effective July 1, 2010.] — The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action. [I.C., § 53-660, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-660A. Applicability of Idaho entity transactions act. [Repealed, effective July 1, 2010.] — (1) Unless the participating entity is excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger or a consolidation in which a limited liability company is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Section 53-662, Idaho Code, applies to transactions in which a limited liability company is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code. [I.C., § 53-660A, as added by 2007, ch. 116, § 11, p. 333.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

Effective Dates. — Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

53-661. Merger or consolidation. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in writing in an operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge or consolidate with or into one (1) or more other business entities with the limited liability company or other business entity as the merger or consolidation agreement shall provide being the surviving or resulting limited liability company or other business entity.

(2) Rights or securities of or interests in a business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving or resulting business entity or of any other business entity.

(3) As used in this section, "business entity" means a domestic or foreign limited liability company or corporation. [I.C., § 53-661, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-662. Approval of merger or consolidation. [Repealed, effective July 1, 2010.] — (1) Unless otherwise provided in writing in an operating agreement, a limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation agreement by the consent of more than one-half (1/2) by number of the members.

(2) Each corporation and foreign limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to such business entity.

(3) Each business entity that is a party to the merger or consolidation shall have such rights to abandon the merger as are provided for in the merger or consolidation agreement or in the laws applicable to the business entity. [I.C., § 53-662, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-663. Articles of merger or consolidation. [Repealed, effective July 1, 2010.] — (1) The business entity surviving or resulting from the merger or consolidation shall deliver to the secretary of state articles of merger or consolidation executed by each constituent entity setting forth:

- (a) The name and jurisdiction of formation or organization of each business entity which is to merge or consolidate;
- (b) That an agreement of merger or consolidation has been approved and executed by each business entity which is a party to the merger or consolidation;
- (c) The name of the surviving or resulting business entity;
- (d) The future effective date of the merger or consolidation, which shall be a date or time certain not more than thirty (30) days subsequent to the date of filing, if it is not to be effective upon the filing of the articles of merger or consolidation;
- (e) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting business entity, and the address of that place of business;

(f) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting business entity, on request and without cost, to any person holding an interest in any business entity which is to merge or consolidate; and

(g) If the surviving or resulting entity is not a business entity organized under the laws of this state, a statement that such surviving or resulting business entity:

(i) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any business entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving business entity or the new business entity arising from the merger or consolidation; and

(ii) Appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving business entity or the new business entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

(2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the articles of merger or consolidation.

(3) The articles of merger or consolidation shall be executed by a limited liability company that is a party to the merger or consolidation in the manner provided for in section 53-610, Idaho Code, and shall be filed with the secretary of state in the manner provided for in section 53-611, Idaho Code.

(4) An agreement of merger or consolidation approved in accordance with the provisions of section 53-662, Idaho Code, may effect any amendment to an operating agreement or effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. An approved agreement of merger or consolidation may also provide that the operating agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, shall be the operating agreement of the surviving or resulting limited liability company. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

(5) In the case of a merger, if the surviving entity is a limited liability company, the articles of organization shall be deemed to be amended to the extent, if any, that changes in its articles of organization are stated in the agreement of merger; and in the case of consolidation, the articles of incorporation or organization of the resulting business entity shall be included in or annexed to the articles of consolidation. [I.C., § 53-663, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-664. Effects of merger or consolidation. [Repealed, effective July 1, 2010.] — A merger or consolidation has the following effects:

(1) The business entities that are parties to the merger or consolidation agreement shall be a single entity, which, in the case of a merger shall be the entity designated in the plan of merger as the surviving entity, and, in the case of a consolidation, shall be the new entity provided for in the plan of consolidation;

(2) Each party to the merger or consolidation agreement, except the surviving entity or the new entity, shall cease to exist;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities and powers of each constituent entity and shall be subject to all the restrictions, disabilities and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable to the type of business entity that is the surviving entity or the new entity;

(4) All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other causes in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein, vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall thenceforth be liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place, or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) The interests in a limited liability company or shares or other interests in a corporation that are to be converted or exchanged into interests, shares or other securities, cash, obligations or other property under the terms of the merger or consolidation agreement are so converted, and the former holders thereof are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law. [I.C., § 53-664, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-665. Filing, service, and copying fees. [Repealed, effective July 1, 2010.] — The secretary of state shall charge and collect:

- (1) For filing the original articles of organization, a fee of one hundred dollars (\$100) if typed and completely included on the standard form prescribed by the secretary of state or one hundred twenty dollars (\$120) if not typed or if attachments are included;
- (2) For filing notice of amendment and issuing a certificate of amendment, a fee of thirty dollars (\$30.00);
- (3) For filing articles of merger or consolidation and issuing a certificate of merger or consolidation, a fee of thirty dollars (\$30.00);
- (4) For filing articles of dissolution and issuing a certificate of dissolution, a fee of thirty dollars (\$30.00);
- (5) For accepting an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of twenty dollars (\$20.00);
- (6) For issuing a certificate of registration to a foreign limited liability company, a fee of one hundred dollars (\$100) if typed and completely included on the standard form prescribed by the secretary of state or one hundred twenty dollars (\$120) if not typed or if attachments are included;
- (7) For filing an application for reinstatement following administrative dissolution, a fee of thirty dollars (\$30.00);
- (8) For filing a certified copy of a decree of judicial dissolution, no fee; and
- (9) For filing an application for voluntary cancellation of registration of a foreign limited liability company, twenty dollars (\$20.00). [I.C., § 53-665, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 13, p. 916; am. 1998, ch. 268, § 17, p. 887.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-666. Execution by judicial act. [Repealed, effective July 1, 2010.] — Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this act may petition the district court in the county where the registered office of the limited liability company is located to direct the execution and filing of the articles or other document. If the court finds that it is proper for the articles or other documents to be executed and filed and that there has been failure or refusal to execute and file such documents, it shall order the secretary of state to file the appropriate articles or other documents. [I.C., § 53-666, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

The words "this act" refer to S.L. 1993, ch.

224, which is compiled as §§ 53-601 to 53-603, 53-605, 53-607 to 53-613, 53-615 to 53-643, 53-644 to 53-655, 53-656 to 53-660, 53-661 to 53-672, and 63-3006A.

53-667. Definition of knowledge. [Repealed, effective July 1, 2010.] — (1) A person has “knowledge” of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has “notice” of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) States the fact to such person; or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence. [I.C., § 53-667, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-668. Rules of construction. [Repealed, effective July 1, 2010.] — (1) It is intended that the provisions of this chapter give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(2) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

(3) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to the provisions of this chapter.

(4) Neither the provisions of this chapter nor any amendments thereto shall be construed so as to impair the obligations of any contract existing when this law or any amendments thereto go into effect, nor to affect any action or proceedings begun or right accrued before this law or any amendments thereto take effect. [I.C., § 53-668, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler’s Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

JUDICIAL DECISIONS

Cited in: *Bushi v. Sage Health Care, PLLC*, — Idaho —, 203 P.3d 694 (2009).

53-669. Jurisdiction of the district courts. [Repealed, effective July 1, 2010.] — The district courts shall have jurisdiction to enforce the provisions of this chapter. [I.C., § 53-669, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-670. Severability. [Repealed, effective July 1, 2010.] — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application. To this end, the provisions of this chapter are severable. [I.C., § 53-670, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-671. Interstate application. [Repealed, effective July 1, 2010.] — A limited liability company organized and existing under the provisions of this chapter may conduct its business, carry on its operations and have and exercise the powers granted by the provisions of this chapter in any state or foreign country. [I.C., § 53-671, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

53-672. Governing law. [Repealed, effective July 1, 2010.] — (1) The liability of members, managers, employees and agents of a limited liability company organized and existing under the provisions of this chapter shall at all times be governed by the provisions of this chapter and the laws of this state.

(2) If a conflict arises between the law of this state and the laws of any other jurisdiction with regard to the liability of a member, manager, employee or agent of a limited liability company organized and existing under the provisions of this chapter for the debts, obligations and liabilities of the limited liability company, or for the acts or omissions of another member, manager, employee or agent of the limited liability company, the provisions of this chapter and the laws of this state shall govern in determining such liability. [I.C., § 53-672, as added by 1993, ch. 224, § 1, p. 760.]

STATUTORY NOTES

Compiler's Notes. — Pursuant to S.L. 2008, ch. 176, §§ 5, 6, this section is repealed effective July 1, 2010. See § 30-6-1104.

CHAPTER 7

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

SECTION.

- 53-701. Definitions.
 53-702. Supplementary general principles of law and equity.
 53-703. Territorial application.
 53-704. Real and personal property — Nonprofit association as legatee, devisee or beneficiary.
 53-705. Statement of authority as to real property.
 53-706. Liability in contract and tort.
 53-707. Capacity to assert and defend — Standing.
 53-708. Effect of judgment or order.

SECTION.

- 53-709. Disposition of personal property of inactive nonprofit association.
 53-710. Appointment of agent to receive service of process.
 53-711. Claim not abated by change of members or officers.
 53-712. Venue.
 53-713. Uniformity of application and construction.
 53-714. Short title.
 53-715. Effect of chapter upon other laws.
 53-716. Transition concerning real and personal property.
 53-717. Savings clause.

53-701. Definitions. — (1) “Member” means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) “Nonprofit association” means an unincorporated organization consisting of two (2) or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. [I.C., § 53-701, as added by 1993, ch. 282, § 1, p. 952.]

STATUTORY NOTES

Acknowledgment. — Following §§ 53-701 through 53-717, Uniform Unincorporated Nonprofit Association Act, appear the Comments drafted by the National Conference of Commissioners On Uniform State Laws. These Comments are reprinted with the permission of the National Conference of Commissioners On Uniform State Laws.

Compiler’s Notes. — The numbering of the Idaho version of the Uniform Unincorporated Nonprofit Association Act differs from the numbering of the official version as approved by the National Conference of Commissioners On Uniform State Laws in that the official version was numbered as §§ 1 — 20 and the Idaho version is numbered as §§ 53-701 — 53-717. Idaho did not adopt §§ 13, 16 — 18 of the Uniform Act. The

numbers of the Idaho version and the official version correspond from §§ 53-701 — 53-712; §§ 53-713 and 53-714, Idaho Code correspond to §§ 14 and 15 in the official version; there is no corresponding section in the official version for § 53-715. Sections 53-716 and 53-717, Idaho Code, correspond to §§ 19 and 20, respectively, of the official version.

In some instances the subsection, subdivision, etc. designations in the Idaho version of a section of the Uniform Unincorporated Nonprofit Association Act are different than those of the official version. For instance § 53-705, Idaho Code contains subsections (1) — (7) with subsection (3) containing subdivisions (a) — (d). The official version of this section, § 5, contains subsections (a) — (g) with subsection (c) containing subdivisions (1) — (4).

Therefore, a reference in the official comments to subsection (c) (1) and (2) would be a reference to subsection (3) (a) and (b) in the Idaho version. In these instances in the offi-

cial comments, the compiler has added in brackets the references to the Idaho version of the section.

OFFICIAL COMMENT

PREFATORY NOTE. This Act reforms the common law concerning unincorporated, nonprofit associations in three basic areas — authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

At common law an unincorporated association, whether nonprofit or for-profit, was not a separate legal entity. It was an aggregate of individuals. In many ways it had the characteristics of a business partnership.

This approach obviously created problems. A gift of real property to an unincorporated association failed because no legal entity existed to receive it. For example, a gift of Blackacre to Somerset Social Club (an unincorporated, nonprofit association) would fail because in law there is no legal entity to receive title. Some courts in time became uncomfortable with this result. Some construed such a gift as a grant to the officers of the association to hold the real estate in trust and manage it for the benefit of the members of the association. Later, some legislatures provided various solutions, including treating the association for these purposes as an entity.

Proceedings by or against an unincorporated association presented similar problems. If it were not a legal entity, each of the members needed to be joined as party plaintiffs or defendants. Class action offered another approach. Again courts and legislatures, especially the latter, provided solutions. “Sue and be sued” statutes found their way on the law books of most states.

Unincorporated associations, not being legal entities, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be. Courts borrowed from the law of partnership the concept that the members of the association, like partners, were co-principals. As co-principals they were individually liable. Again courts and legislatures, responding to concerns of their constituents about this result, modified these rules. Courts found that, in large membership associations, some members did not have the kind of control or participation in the decision process that made it reasonable and fair to view them as co-principals. Legislatures also took steps. Perhaps most striking are the statutes adopted in many states in the last decade

excusing officers, directors, members, and volunteers of nonprofit organizations from liability for simple negligence. There is great variety in the details; a few statutes condition the immunity on the association carrying appropriate insurance or qualifying under Internal Revenue Code Section 501(c).

Related to liability is the question of enforcement of a judgment obtained against an unincorporated association, its members, and its property. If fewer than all members are liable in contract or tort, the property that members own jointly or in common may not be seized in execution of a judgment without severing the interest of those who are liable from those who are not. Again, courts using “joint debtor,” “common property,” and “common name” statutes fashioned more workable solutions. Some legislatures have also addressed the problem directly. For these purposes, unincorporated associations have been treated as legal entities — like a corporation.

What is striking about the legislative treatment of these and other legal issues concerning unincorporated, nonprofit associations is that no state appears to have addressed them in a comprehensive, integrated, and internally consistent manner.

This Act deals with a limited number of the major issues relating to unincorporated, nonprofit associations in an integrated and consistent manner.

The American Bar Association first issued its Model Nonprofit Corporation Act in 1964; it was most recently revised in 1987. The act deals comprehensively with nonprofit corporations, including troublesome questions of governance and membership. This Act, on the other hand, does not treat these and other questions. Enactment of this Act would leave these matters to a jurisdiction’s common law or its statutes on the subject. It should be noted, too, that many states have statutes on special kinds of unincorporated, nonprofit associations, such as churches, mutual benefit societies, social clubs, and veteran’s organizations. Which of these acts should be repealed and which retained in whole or part may require careful consideration.

This Act applies to all unincorporated, nonprofit associations. Nonprofit organizations are often classified as public benefit, mutual benefit, or religious. For purposes of this Act, it is unnecessary to treat differently these three categories of unincorporated, nonprofit associations. Unlike some state laws, it is not

confined to the nonprofit organizations recognized as nonprofit under Section 501(c) (3), (4), and (6) of the Internal Revenue Code. There is no principled basis for excluding any nonprofit association. Therefore, the Act covers unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated, nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

The Act is designed to cover all of these associations to the extent possible. To the extent a jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, this Act will supplement existing legislation. As is pointed out in the Comments, a state electing to adopt this Act will need to examine carefully its statutes to determine which it wants to repeal, which to amend, and which to retain.

The basic approach of the Act is that an unincorporated, nonprofit association is a legal entity for the purposes that the Act addresses. It does not make these associations legal entities for all purposes. It is left to the courts of an adopting state to determine whether to use this Act by analogy to conclude that an association is a legal entity for some other purpose.

It should be noted, too, that many of the provisions are intended to be supplemented by a jurisdiction's existing law. For example, Section 5, which provides for the filing of a statement of association authority, does not provide details concerning the filing process. It leaves to other law such details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof, and the amount of the filing fee.

Two sections are bracketed as optional — Section 12 [§ 53-712] on venue and Section 13 [section not adopted by Idaho] on service of process. A jurisdiction may decide that its present rules are consistent with the entity view of an association and provide the appropriate rule. Therefore, it would not adopt Sections 12 and 13 [§§ 53-712 and a section not adopted by Idaho]. Both sections deal with only a part of the questions of venue and service of process. This means that if they are adopted they are only a part of the jurisdiction's law on the subject. And perhaps they should be placed in the court rules or statutes on those subjects instead of in the state's code with the other sections of this Act.

A nonprofit organization wanting a comprehensive governance structure might consider incorporating under a nonprofit corporation statute, particularly one that follows the format of the ABA Model Nonprofit Corporation Act. These statutes provide, among other

things, comprehensive governance provisions. As this Act contains none, adoption of a substantial charter and bylaws would be required to obtain similar internal rules and structure.

There has been concern that this Act may deter nonprofit organizations from incorporating and that failure to incorporate would deprive the public of protections incorporation would provide. Clearly, incorporation does provide governmental involvement that this Act does not.

Most jurisdictions regulate solicitation by charitable organizations. Many of these are comprehensive. See, for example, Ill. Ann. Stat. ch. 23, Sections 5100-5121 (Smith-Hurd 1992); Minn. Stat. Ann. Sections 309.50-309.61 (1992); Uniform Management of Institutional Funds Act.

These statutes frequently require, among other things, filing of a comprehensive statement with the attorney general before soliciting funds, including a copy of contracts with any professional fundraisers, and registration of professional fundraisers. A range of civil and criminal sanctions are provided. These statutes apply to all persons soliciting for charitable purposes, incorporated or not. In short, this Act's nonprofit associations are covered.

It should be noted, too, that a nonprofit corporation or unincorporated, nonprofit association is not the only choice. The Uniform Law Foundation, like many Illinois foundations, is organized as a charitable trust. Ill. Ann. Stat. ch. 14, Sections 51-69, (Smith-Hurd 1992); Uniform Supervision of Trustees for Charitable Purposes Act. Finally, it should be repeated that this Act is needed for the informal nonprofit organizations that do not have legal advice and so may not consider whether to incorporate.

1. With respect to relations external to a nonprofit association, whether a person is a member of the organization determines principally a member's responsibility to third parties. Internally, whether a person is a member might determine specified rights and responsibilities, including access to facilities, voting, and obligation to pay dues. This Act is concerned only with determining whether a person is a member for purposes of external relations, such as liability to third parties on a contract of the nonprofit association. Therefore, "member" is defined in terms appropriate to these purposes. "Member" includes a person who has sufficient right to participate in the affairs of a nonprofit association so that under common law the person would be considered a co-principal and so liable for contract and tort obligations of the nonprofit association.

The definition may reach somewhat beyond decisions of some courts. Either participation

in the selection of the leadership or in the development of policy is enough. Both are not required. This broad definition of member ensures that the insulation from liability is provided in all cases in which the common law might have imposed liability on a person, simply because the person was a member.

2. A fundraising device commonly used by many nonprofit associations is the membership drive. In most cases the contributors are not members for purposes of this Act. They are not authorized to "participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy." Simply because an association calls a person a member does not make the person a member under this Act.

Section 6 [§ 53-706] nevertheless protects "a person considered to be a member by a nonprofit association" even though the person is not within the definition of member in paragraph (1).

3. The role of a member in the affairs of an association is described as "may participate in the selection" instead of "may select or elect" the governing board and officers and "may participate ... in the development of policy" instead of "may determine" policy. This accommodates the Act to a great variation in practices and organizational structures. For example, some nonprofit associations permit the president or chair to name some members of the governing board, such as by naming the chairs of principal committees who are designated ex officio members of the governing board. Similarly, the role in determination of policy is described in general terms. "Persons authorized to manage the affairs of the association" is used in the definition instead of president, executive director, officer, member of governing board, and the like. Given the wide variety of organizational structures of nonprofit association to which this Act applies and the informality of some of them the more generic term is more appropriate.

4. "Person" instead of individual is used to make it clear that associations covered by this Act may have individuals, corporations, and other legal entities as members. Unincorporated, nonprofit trade associations, for example, commonly have corporations as members. Some national and regional associations of local government officials and agencies have governmental units or agencies as members.

5. Paragraph (2) defines "nonprofit association." The model American Bar Association acts deal with both for-profit and nonprofit organizations. Unincorporated, for-profit organizations are largely covered by the uniform partnership acts. The differences between for-profit organizations are so significant that it would be impractical to cover both in a single act. Therefore, this Act deals only with nonprofit organizations.

6. The term "nonprofit association" is used instead of "association" for several reasons. The risk that this Act when placed in a state's code would be construed to apply to both nonprofit and for-profit associations should thus be avoided. Acts dealing with one kind of association when placed in a code have sometimes lost their identification and been inadvertently applied to the other kind where the term "association" alone was used. For example, the New York Joint-Stock Association Act of 1894 used the term "association," which it defined to include only for-profit organizations. "Association" was held in 1938 to include an unincorporated political party and the act applied to it. *Richmond County v. Democratic Organization of Richmond County*, 1 NYS 2d 349 (1938). Subsequent decisions applied the act to other unincorporated, nonprofit organizations. The use of "nonprofit association" instead of merely "association" should also avoid the risk of this Act being improperly used to develop a common law rule by analogy from this Act to apply in a case involving a for-profit association. *Common Law and Legislation*, 21 Harv. L. Rev. 383 (1908); Robert F. Williams, *Statutes as Sources of Law Beyond their Terms in Common Law Cases*, 50 Geo. Wash. L. Rev. 554 (1982).

Legal issues concerning unincorporated, for-profit associations that are not partnerships and so not controlled by a partnership act would be governed by a state's other statutory or common law. Resort to one of the two partnership acts for the purposes of developing a common law rule by analogy would be appropriate. Resort for this purpose to this Act in the case of an unincorporated, for-profit association would not be appropriate.

7. Two or more persons is the common statutory requirement to constitute an unincorporated, nonprofit association. New Jersey, on the other hand, requires that there be seven or more members to be an association under its laws. This Act suggests the smaller number — two. Consideration was given to specifying "one" instead of "two." For example, the developer of a condominium may have created a condominium association as an unincorporated nonprofit association. Before any units are sold the developer as owner of all units has all of the memberships in the association. Should it be treated as a nonprofit association under this Act from the beginning? It should not. Can one person be "joined by mutual consent for a common purpose?" To ask the question would seem to be to answer it. If the concern is to give the developer the entity protections provided by this Act, it is very likely that it already has some protection because it is a business corporation. Nevertheless, the number is placed in brackets, in part, to raise the question

whether the number should be one or two or even a larger number.

The members must be joined together for a common purpose. Several states provide that they be "joined together for a *stated* purpose" (emphasis added). Because of the informality of many ad hoc associations, it is prudent not to impose the requirement that the common purpose be "stated." Very probably, it is the small, informal, ad hoc associations and those third parties affected by them that most need this Act.

8. "Nonprofit" is not defined. A common definition — it is an association whose net gains do not inure to the benefit of its members and which makes no distribution to its members, except on dissolution — does not work for all nonprofit associations. Consumer cooperatives, for example, make distributions to their members; but they are not for-profit organizations. Those consumer cooperatives not organized under specific state or federal

laws need the benefits of this Act.

It is instructive to note that the drafting committee for the ABA Model Nonprofit Corporation Act finally determined that it could not develop a satisfactory definition of nonprofit.

9. The final sentence of paragraph (2) is adapted from Section 201 (d) (1) of Revised Uniform Partnership Act (RUPA). This stresses that more than common ownership and use is required. For example, that three families own a lake cottage and share its use does not make the three families a nonprofit association. Paragraph (2) precludes arrangements that are merely common ownership from being a nonprofit association under this Act.

10. The definition of "person" in paragraph (3) is a standard NCCUSL definition.

11. The definition of "State" in paragraph (4) is a standard NCCUSL definition.

53-702. Supplementary general principles of law and equity. —

Principles of law and equity supplement this chapter unless displaced by a particular provision of it. [I.C., § 53-702, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. This section is adapted from Uniform Commercial Code Section 1-103. The reference in Section 1-103 to "the law merchant" and its examples of supplementary rules, such as those of principal and agent and estoppel, were deleted as irrelevant or incomplete and unnecessary. This change in language does not manifest any change in substance.

2. This Act contains no rules concerning governance. However, recourse to rules of governance must be had to apply some of the Act's rules. For example, whether a nonprofit association is liable under a contract made for it by an individual depends on whether the individual had the necessary authority to act as agent. Was the individual given the author-

ity by someone empowered by the nonprofit association to give the authority? To decide a case like this a court must resort to the rules of the nonprofit association or, if there are none applicable or none at all, to the common law or other statutory law of the jurisdiction.

3. Efforts were made to develop default internal rules of governance — applicable if an association had none or none that were applicable. This effort demonstrated the complexity and difficulty of fashioning rules that would reasonably fit a wide variety of nonprofit associations — large and small, public benefit, mutual benefit, and religious, and of short and indefinite duration. It was thought best to leave this question to other law of the jurisdiction.

53-703. Territorial application. — Real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state. [I.C., § 53-703, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

This section is consistent with Restatement (Second) of Conflict of Laws Section 223 (1971). Section 3 [§ 53-703] makes a conveyance or devise of land located in a state that

has adopted this Act effective even though it would not be effective under the law of the state in which the nonprofit association has its principal office or other significant rela-

tionship. No relationship of the nonprofit association other than that the property is situated in the state is required.

53-704. Real and personal property — Nonprofit association as legatee, devisee or beneficiary. — (1) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real or personal property.

(2) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract. [I.C., § 53-704, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Subsection (a) [subsection (1)] is based on Section 3-102(8), Uniform Common Interest Act. It reverses the common law rule. Inasmuch as an unincorporated, nonprofit association was not a legal entity at common law, it could not acquire, hold, or convey real or personal property. Harold J. Ford, *Unincorporated Non-Profit Associations* 1-45 (Oxford Univ. Press 1959), 15 A.L.R. 2d 1451 (1951); Warburton, *The Holding of Property by Unincorporated Association*, Conveyancer 318 (September-October 1985).

2. This strict common law rule has been modified in various ways in most jurisdictions by courts and statutes. For example, courts have held that a gift by will or inter vivos transfer of real property to a nonprofit association is not effective to vest title in the nonprofit association but is effective to vest title in the officers of the association to hold as trustees for the members of the association. *Matter of Anderson's Estate*, 571 P. 2d 880 (Okla. App. 1977).

A New York statute specifies that a grant by will of real or personal property to an unincorporated association is effective if within three years after probate of the will the association incorporates. McKinney's N.Y. Estates, Powers, & Trust Law, Section 3-1.3 (1981).

California gives any "unincorporated society or association and every lodge or brach of any such association, and any labor organization" full right to acquire, hold, or transfer any "real estate and other property as may be necessary for the business purposes and ob-

jects of the society," and acquire and hold any property not so necessary for 10 years. California Corporations Code, Title 3, Unincorporated Associations, Section 20001 (1991).

As is the case with many of the problems created by the view that an unincorporated association is not an entity the statutory solutions are often partial — limited to special circumstances and associations. Subsection (a) [subsection (1)] solves this problem for all nonprofit associations, for all kinds of transactions, and for both real and personal property.

3. Even if a nonprofit association's governing documents provide that it "may not acquire real property," subsection (a) [subsection (1)] makes effective a transfer of Blackacre to the association. A different result would obviously disrupt real estate titles. The remedy for this violation of internal rules lies not in preventing title from passing but, as with other organizations, in an action by members against their association and its appropriate officers to undo the transaction.

4. Subsection (b) [subsection (2)] is a necessary corollary of subsection (a) [subsection (1)] and, thus, it may be unnecessary. However, several states expressly provide that an unincorporated, nonprofit association may be a legatee, devisee, or beneficiary. See, for example, Md. Estates & Trusts Code Ann. Section 4-301 (1991). Therefore, it is desirable to continue this as an express rule. Subsection (b) [subsection (2)] applies to both trusts and contracts. Not all state statutes apply expressly to both.

53-705. Statement of authority as to real property. — (1) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(2) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office in the county in which a transfer of the property would be recorded.

(3) A statement of authority must set forth:

- (a) The name of the nonprofit association;
- (b) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state;
- (c) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and
- (d) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(4) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(5) The county recorder may collect a fee for recording the statement of authority in the amount authorized for recording a transfer of real property.

(6) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless cancelled earlier, a recorded statement of authority or its most recent amendment is cancelled by operation of law five (5) years after the date of the most recent recording.

(7) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority. [I.C., § 53-705, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. This section is based on Revised Uniform Partnership Act (RUPA) Section 303. California Corporations Code, Title 3, Unincorporated Associations, Section 20002 (1991), is similar.

2. A statement of authority need not be filed to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this, it should, but need not, be filed. The filing provides important documentation.

3. Inasmuch as the statement relates to the authority of a person to act for the association in transferring real property, subsection (b) [subsection (2)] requires that the statement be filed or recorded in the office where a transfer of the real property would be file or recorded. This is usually the county in which the real estate is situated. This is where a title search concerning the real estate would be conducted. RUPA Section 303 provides for central filing, such as with the secretary of state, but its statement of partnership authority concerns authority of partners gener-

ally, not just with respect to real estate.

4. "Filed" and "recorded" are bracketed to direct an enacting state to choose. In most jurisdictions "recorded" will be the appropriate choice.

5. Subsection (c)(2) [subsection (3)(b)] may present a problem for small, ad hoc, nonprofit associations. They may have no fixed office address. They may meet in the homes of their leaders. However, if they distribute literature or file petitions they are likely to have a mailing address.

6. Subsection (c)(3) [subsection (3)(c)] permits the statement to identify as the person who can act for the association one who holds a particular office, such as president. This designation relieves the association from the need to make additional filings on each change of officers. Under local title standards and practices the transferee and filing or recording office are likely to require a certificate of incumbency if the statement designates the holder of an office.

7. Subsection (c)(4) [subsection (3)(d)] requires the statement to document the author-

ity of the person granted power to deal with the nonprofit association's real property and of the person authorized to execute the statement of authority.

8. Subsection (d) [subsection (4)] is designed to reduce the risk of fraud and to reflect law and practice applicable to other organizations. It requires someone other than the person authorized to deal with the real property to execute the statement of authority on behalf of the nonprofit association.

9. Subsection (f) [subsection (6)] makes a statement inoperative five years after its most recent recording or filing. This prevents

a statement whose recording or filing is unknown by the association's current leadership from being effective. Reliance on a filing or recording this old is, in effect, not in good faith.

10. Subsection (g) [subsection (7)] is based on RUPA Section 303(h). Its obvious purpose is to protect good faith purchasers for value without notice who rely on the statement, including those who acquire a security interest in the real property. There remains, of course, the risk that the statement itself was unauthorized.

53-706. Liability in contract and tort. — (1) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(2) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association. [I.C., § 53-706, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. At common law a nonprofit association was not a legal entity separate from its members. Borrowing from the law of partnership, the common law viewed a nonprofit association as an aggregate of its members. The members are co-principals. Subsection (a) [subsection (1)] changes that. It makes a nonprofit association a legal entity separate from its members for purposes of contract and tort.

This Act does not deal with liability of members or other persons acting for a nonprofit association for their own conduct. With respect to contract and tort Section 6 [this section] leaves that to the other law of the jurisdiction enacting this Act.

3. Subsections (b) through (e) [subsections (2) through (5)] are applications to common cases of the basic principle in subsection (a) [subsection (1)]. Because a nonprofit association is made a separate legal entity, its members are not co-principals. Consequently, they are not liable on contracts or for torts for which the association is liable. Subsection (b) [subsection (2)] specifies that result with respect to contracts.

4. Subsection (b) [subsection (2)] applies the principle in subsection (a) [subsection (1)] to relieve members and others from vicarious liability for the contracts of a nonprofit association.

5. Subsections (a) and (b) [subsections (1)

and (2)) eliminate a risk that existed under common law. An agent makes an implied warranty of authority to the other contracting party. If the purported principal does not exist, the agent obviously breaches the warranty. Because an unincorporated, nonprofit association was not a legal entity, one purporting to act for it breached this implied warranty. *Smith & Edwards v. Golden Spike Little League*, 577 P. 2d 132, 134 (Utah 1978). Subsection (b) [subsection (2)] treats a nonprofit association as a legal entity; therefore, an agent who acts for it within her authority does not breach a warranty.

6. "Merely" because a person is a member does not make the person liable on an association's contract. This formulation means that there are special circumstances that may result in liability. For example, a member may expressly become a party to a contract with the nonprofit association. Subsection (b) [subsection (2)] treats relieves members only of their vicarious liability. Liability for one's own conduct is left to the other law of the jurisdiction.

An agent with authority from a nonprofit association who negotiates a contract without disclosing the agent's representative status is liable on the contract. Under agency law an agent acting within the agent's scope of authority for an undisclosed or partially disclosed principal is personally liable on the contract along with the principal, unless the other contracting party agrees not to hold the agent liable. *Restatement (Second) Of Agency* 320-322; Reuschlein and Gregory, *Agency & Partnership* 161-163 (2d ed. 1990).

Courts have pierced the corporate veil of nonprofit corporations. Comment, *Piercing the Nonprofit Corporate Veil*, 66 Marq. L. Rev. 134 (1984). Section 6 makes a nonprofit association a legal entity for these purposes. Therefore, as a matter of its other law a jurisdiction enacting this Act may appropriately apply this doctrine to a nonprofit association. In *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 420 N.E.2d 251 (1981), the president of a nonprofit corporation was found to have so commingled its funds and assets with his own and those of a business corporation he controlled and have treated them as his own for his benefit that the corporate veil must be pierced to promote justice. He was found liable for a debt contracted in the name of the nonprofit corporation. See also Harry G. Henn & John R. Alexander, *Law of Corporations*, pp 344-352 (3d ed. 1983); Alfred F. Conrad, *Corporations in Perspective*, pp 424-433 (Foundation Press, 1976).

7. An example of a partial statutory solution of members' liability for contracts of a nonprofit association is California Corporations Code, Title 3, Nonprofit Associations, Section 21100 (1991). It relieves members

from liability for "debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, contraction, repair, or furnishing of buildings or other structures, to be used for purposes of the association." As noted earlier, partial and uncoordinated statutory solutions of common law problems are typical.

8. Subsection (c) [subsection (3)] applies the principle in subsection (a) [subsection (1)] to relieve members and others from liability for torts for which the nonprofit association is liable. Inasmuch as Section 6 [§ 53-706] provides that a member is not a co-principal, the member cannot be considered to be an employer of the employee who committed the tort. Again, only relief from vicarious liability is provided.

Liability of a member or other person who acts for the nonprofit association is governed by other law of the jurisdiction. That an employer is liable for a tort committed by its employee does not excuse the employee.

9. The immunity from vicarious liability provided by subsections (b) and (c) [subsections (2) and (3)] does not depend on the remedy sought. Whether it is for damages for breach of contract or tort, unjust enrichment, or the like the immunity is provided.

10. Since the mid 1980's all states have enacted laws providing officers, board members, and other volunteers some protection from liability for their own negligence. The statutes vary greatly as to who is covered, for what conduct protection is given, and the conditions imposed for the freedom from liability. Some apply only to nonprofit corporations. *State Liability Laws for Charitable Organizations and Volunteers* (Nonprofit Risk Management & Insurance Institute, 1990); *Developments, Nonprofit Corporations*, 105 Harv. L. Rev. 1578, 1685-1696 (1992).

The 1987 Texas act, for example, relieves directors, officers, and other volunteers from liability for simple negligence that causes death, damage, or injury if the volunteer acted in the scope of her duties for a charitable organization exempt under Internal Revenue Code Section 501 (c)(3) or (4). The act also limits the amounts that may be recovered from an employee or the organization if the organization carries requisite liability insurance. The constitutionality of the provision relieving volunteers from liability has been questioned under Article I, Section 13 of the Texas Constitution — the Open Courts provision. Note, *The Constitutionality of the Charitable Immunity and Liability Act 1987*, 40 Baylor L. Rev. 657 (1988). Some statutes premise all relief upon the organization having specified liability insurance.

Section 6 [§ 53-706] does not affect these

statutes. As noted earlier Section 6 [§ 53-706] deals only with vicarious liability. These statutes concern liability for one's own conduct.

11. Although not a concern of Section 6 [§ 53-706], perhaps it should be noted that nonprofit organizations have been held liable for tortious acts and omissions not only of employees but also of members. In *Guyton v. Howard*, 525 So. 2d 918 (Fl. App. 1988) a nonprofit organization was held liable for the negligence of members who acted for the organization in conducting an initiation that resulted in injury.

12. Subsection (d) [subsection (4)] applies the principle in subsection (a) [subsection (1)] to reverse the common law rule that the negligence of an employee of an association is imputed to its members. A member as co-principal was vicariously responsible for an employee's conduct within the scope of the employee's duties. Section 6 [§ 53-706], however, makes the nonprofit association a legal entity. Thus, a negligence is not imputed to a member.

Because the employee's negligence is not imputed, the member's suit against the nonprofit association for negligence by the employee is not subject to the defense of contributory negligence.

Some courts treated large nonprofit associations as entities for some purposes and so did not impute the negligence of an employee to a member. Therefore, a member could recover from the association. *Marshall v. International Longshoreman's and Warehouseman's Union*, 57 Cal. 2d 781, 371 p. 2d 987 (1962); Judson A. Crance, *Liability of an Unincorporated Association for Tortious Injury to a Member*, 16 Vand L Rev 319, 323 (1963).

13. Subsection (e) [subsection (5)] applies the principle in subsection (a) [subsection (1)] to reverse the common law rule that a member may not sue the member's unincorporated, nonprofit association. A member as co-principal is logically a defendant as well as a plaintiff in such an action. The logic is that one may not sue oneself.

Subsection (a) [subsection (1)] makes an unincorporated nonprofit association a legal entity. Therefore, a member is separate from the nonprofit association. There is thus no logical obstacle to either suing the other. A nonprofit association may, for example, sue a member for delinquent dues. See, for exam-

ple, Section 6.13 ABA Nonprofit Corporation Act (1987).

14. The Texas Supreme Court recently overruled the common law rule and held that a member may sue the unincorporated, nonprofit association of which the person is a member. *Cox v. Thee Evergreen Church*, 836 S.W.2d 167 (Tex. 1992). The court also overturned the Texas common law rule that the negligence of an employee is imputed to a member. The court referred to a statute authorizing a nonprofit association to sue and be sued and other Texas statutes giving entity status for limited purposes to unincorporated, nonprofit associations. It did not, however, rely on them in overturning the historic common law rule. It simply found the old rule not suitable for present times. The court also followed recent developments in other courts.

15. Section 6 [§ 53-706] relieves from vicarious liability not only members but also certain others. Persons who are "authorized to participate in the management of the affairs of the nonprofit association" are protected. Persons within this group — largely directors and officers, however denominated — are likely also to be members as defined in Section 1(1) [§ 53-701(1)], and protected as such. If they are not members (i.e. not co-principals) they should not be found liable at common law. Section 6 [§ 53-706] extends protection to this group out of abundant caution. It is possible that a court might misapply the common law rationale for liability to hold a non-member manager vicariously liable. Section 6 [§ 53-706] prevents that somewhat remote possibility.

Section 6 [§ 53-706] also extends protection to a person who is not within the definition of "member" in Section 1(1) [§ 53-701(1)] but is "considered to be a member by the nonprofit association." A person within this clause is one who does not have the relationship to the nonprofit association that would permit a finding under the common law that the person is a co-principal. Also the person is not a director, officer, or manager within the preceding phrase. That a person not within the two preceding phrases but within the third phrase might be found vicariously liable seems quite remote. Nevertheless, Section 6 [§ 53-706] accords this person protection.

As noted earlier, Section 6 [§ 53-706] concerns vicarious liability only. Liability for one's own conduct is covered by other law of the enacting jurisdiction.

53-707. Capacity to assert and defend — Standing. — (1) A nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(2) A nonprofit association may assert a claim in its name on behalf of its members if one (1) or more members of the nonprofit association have

standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes and neither the claim asserted nor the relief requested requires the participation of a member. [I.C., § 53-707, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Subsection (a) [subsection (1)] broadly recognizes the right of a nonprofit association to participate as an entity in judicial, administrative, and governmental proceedings, and in arbitration and mediation on behalf of it and its members. It may sue and be sued. Many states have enacted statutes granting unincorporated associations these rights. Many have rejected the argument that these acts made an unincorporated, nonprofit association a separate legal entity for other purposes.

2. Ohio Rev. Code Ann. Section 1745.01 (Baldwin 1991) provides that an unincorporated association may "sue or be sued as an entity under the name by which it is commonly known and called." This formulation has an element that subsection (a) [subsection (1)] does not have — a description of the association name to be used. Maryland requires that the unincorporated association have a "group name." Md. Estates & Trust Code Ann. Section 6-406(a) — (1991). As some of the informal nonprofit associations may not have fixed on a name but need the benefit of the rule, subsection (a) [subsection 1] does not require that it have a name.

3. Subsection (b) [subsection (2)] describes an association's standing to represent the interests of its members in a proceeding. It is the federal standing rule. *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53, L. Ed. 2d 383 (1977). A nonprofit association must meet the three requirements only if it seeks to represent the interests of its members. If the suit concerns

only the nonprofit association's interests, subsection (b) [subsection (2)] does not apply.

4. If participation of individual members is required, the nonprofit association does not have standing. If the injury for which a claim is made or the remedy sought is different for different members, their participation through testimony and presenting other evidence is required. The typical case in which a nonprofit association has standing is where it seeks only a declaration, injunction, or some form of prospective relief for injury to its members. *Warth v. Seldin*, 422 U.S. 490, 515, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

5. Subsection (b) [subsection (2)] does not require the nonprofit association to show that it suffered harm or has some interest to protect to have standing to represent the interests of its members. *Warth v. Seldin*, 422 U.S. 490, 511 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). Some states require an association to have an interest to protect which is separate from that of its members. One court found that the probable loss of members if it did not take action on their behalf was a sufficient interest to protect to give it standing to represent its members. This approach certainly diminishes greatly the burden of satisfying the requirement. States have further modified the old standing rule. Recently many states have adopted the three-pronged federal rule, which is the rule in subsection (b) [subsection (2)].

This section does not re-state rules of joinder because they will be governed by the jurisdiction's other law.

53-708. Effect of judgment or order. — A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered to be a member by the nonprofit association. [I.C., § 53-708, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. This section is consistent with Restatement (Second) of Judgments, Section 61(2), which provides: "If under applicable law an unincorporated association is treated as a jural entity distinct from its members, a judgment for or against the association has the same effects with respect to the association and its members as a judgment for or against a corporation"

2. Section 8 [§ 53-708] applies not only to judgments but also to orders, such as an award rendered in arbitration or an injunction.

3. Section 8 [§ 53-708] reverses the common law rule. Under the common law's aggregate view of an unincorporated association, members, as co-principals, were individually liable for obligations of the association.

4. Some states changed the common law rule by statute. Ohio, for example, provides that the property of an unincorporated association is subject to judgment, execution, and other process and that a money judgment against the association may be “enforced only against the association as an entity” and not

“against a member.” Ohio Rev. Code Ann., Section 1745.02 (Baldwin 1991).

An obvious corollary of this section is that a judgment against a nonprofit association may not be satisfied against a member unless there is also a judgment against the member.

53-709. Disposition of personal property of inactive nonprofit association. — If a nonprofit association has been inactive for three (3) years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(1) If a document of the nonprofit association specifies a person to whom transfer is to be made under those circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes or to a government, governmental subdivision, agency, or instrumentality. [I.C., § 53-709, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Section 9 [§ 53-709] is not a dissolution rule. An inactive nonprofit association may not be one that has dissolved. It may have just stopped functioning and have taken no formal steps to dissolve. It might possibly be revived.

Section 9 [§ 53-709] gives a person in possession or control of personal property of a nonprofit association an opportunity to be relieved of responsibility for it. Compliance with the section provides a safe harbor.

2. “Inactive” is not defined. A nonprofit association that has accomplished its purpose, such as seeking approval in a school bond election, is very likely inactive. A nonprofit association that has stopped pursuing its purposes, collecting dues, holding elections of officers and board members, and conducting meetings, and has no employees would seem to be inactive.

“Inactive” does not describe a nonprofit association whose sole purpose is to act should a specific problem arise. That there has been no activity because the problem has not arisen does not make the standby organization “inactive.”

A three year period of inactivity is suggested. It is unlikely that a nonprofit association that has been inactive for that period will begin functioning again. Thus, it is prudent to transfer its assets to someone likely to make appropriate use of them.

3. Section 9 [§ 53-709] applies only to personal property — tangible and intangible. Unclaimed property acts also apply to both kinds of personal property. All states have some form of unclaimed property act. Therefore, the relationship of these acts to this Act must be examined.

The Uniform Unclaimed Property Act

(1981) applies to certain intangible and tangible personal property. If the property has been unclaimed by the owner for five or more years it is presumed abandoned. Intangible property, such as checking and savings accounts and uncollected dividends, is the main concern of these Acts. The obligor, such as a bank or other financial institution and corporation, is directed to report and turn over the property to the state administrator.

The only tangible personal property to which the Uniform Unclaimed Property Act (1981) applies is that in “a safe deposit box or any other safekeeping repository.” Many states have additional statutes that apply to property abandoned in airport, bus, and railroad lockers and the like. Tangible personal property of an inactive nonprofit association in the control or possession of a member or other person is not likely to be in these places. Therefore, overlap of this Act with the other state acts with respect to tangible personal property is likely to be very limited.

Property of an inactive nonprofit association is likely to be in the possession or control of a former member, board member, officer, or employee. Especially with respect to intangible property, their relation to the property is unlike that of those regulated by the unclaimed property acts. They are custodians or fiduciaries and not obligors. Those upon whom duties are imposed by the unclaimed property acts are obligors on such intangible property as bank accounts, money orders, life insurance policies, and utility deposits. The person acting under Section 9 [§ 53-709] is very unlikely to be in the position of an obligor on such intangible property. In summary, there appears to be limited overlap.

Other special statutes may apply, such as laws governing unexpended campaign funds. Texas, for example, permits a person to retain political contributions for six years after the person is no longer an office-holder or candidate. It gives the person six choices of transferees, including a "recognized tax exempt charitable organization formed for educational, religious or scientific purposes." Tex. Code Ann. Elections Section 251.012(d) and (e) (Vernon's 1986). Minnesota provides that if an unincorporated religious society "ceases to exist or to maintain its organization" title to its real and personal property vests in the "next higher governing or supervisory" body of the same denomination. Minn. Stat. Ann. Section 315.37 (1992).

4. Section 9 [§ 53-709] does not address what should be done with real property of an inactive nonprofit association. This seems justified. A nonprofit association owning real property of significant value is unlikely to become inactive. In the rare case that it does, the assistance of a court may be obtained in making appropriate disposition of the real property, primarily to ensure good title.

5. To obtain a Section 501(c)(3) tax classification as a nonprofit organization an association must specify a distribution of assets on dissolution that satisfies the Internal Revenue Code. To avoid the interpretation that Section 9 [§ 53-709] might be construed to override and approved distribution provision in an association's governing document the primacy of that distribution provision is expressly recognized in paragraph (1).

6. If there is no bylaw or other controlling document the person may transfer the personal property to another nonprofit organization or a government or governmental entity.

The nonprofit organization need not have the same nonprofit purpose as the inactive one. It is enough that the transferee's purpose is "broadly similar." This requirement should not be construed narrowly. Otherwise, the risk of potential litigation over the transferor's choice will frustrate the section's purpose to provide a safe harbor.

There is no limitation with respect to the choice of a government or governmental entity.

7. Inasmuch as the transfer is made without consideration and the association almost certainly rendered insolvent, creditors of a nonprofit association would be protected by the Uniform Fraudulent Transfer Act Sections 4(a) and 5 and similar statutes. Whether they should also be protected if the transfer is made to the administrator of an unclaimed property statute depends on the terms of a jurisdiction's act. Uniform Unclaimed Property Act (1981) Sections 20 and 24 contemplate that a creditor may proceed against property in the hands of the administrator if the creditor claims an interest in the property, such as a security interest or judgment lien. However, a general creditor without some claim against the property would not be protected. It is unlikely that an inactive nonprofit association would have both unpaid creditors and a significant amount of property. Therefore, the two issues discussed above are unlikely to arise.

8. The person in possession or control is not required to give notice of the proposed transfer to anyone. An examination of to whom notice might reasonably be given reveals the difficulty with such a requirement. Almost by definition an inactive nonprofit association has no current members.

53-710. Appointment of agent to receive service of process. —

(1) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(2) A statement appointing an agent must set forth:

- (a) The name of the nonprofit association;
- (b) The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and
- (c) The information required by section 30-405(1), Idaho Code.

(3) A statement appointing an agent, and an amendment or cancellation thereof, must be signed by a person authorized to manage the affairs of a nonprofit association.

(4) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement. [I.C., § 53-710, as added by 1993, ch. 282, § 1, p. 952; am. 2007, ch. 314, § 74, p. 887.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 314, rewrote subsection (1)(c), which formerly read: “The name of the person in this state authorized to receive service of process and the person’s address, including the street address, in this state”; in subsection (3), inserted “and an amendment or cancellation thereof,” and deleted the last two sentences, which read: “The statement must also be signed by the person appointed agent, who thereby accepts the appointment. The ap-

pointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association”; and deleted subsection (4), which read: “The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment or a resignation in the amount charged for filing similar documents” and redesignated former subsection (5) as (4).

OFFICIAL COMMENT

1. This section authorizes but does not require a nonprofit association to file a statement authorizing an agent to receive service of process. It is, of course, not the equivalent of filing articles of incorporation. However, some nonprofit associations may find it prudent to file. Filing may assure that the nonprofit association’s leadership gets prompt notice of any lawsuit filed against it. Also, depending upon the jurisdiction’s other laws, filing gives some public notice of the nonprofit

association’s existence and address.

2. Central filing with a state official is provided. This is where parties will seek information of this kind and where this is commonly publicly filed.

3. The format of this section is very much like Section 5 [§ 53-705], which concerns a statement of authority with respect to property. Because one requires local and other central filing they are not combined.

53-711. Claim not abated by change of members or officers. — A claim for relief against a nonprofit association does not abate merely because of a change in its members, persons authorized to manage the affairs of the nonprofit association, or a person considered by the nonprofit association to be a member. [I.C., § 53-711, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

This provision reverses the common law rule of partnerships, which courts often extended to unincorporated, nonprofit associations. Uniform Partnership Act Sections 29 and 31(4). This Act’s entity approach requires this change of the old common law rule.

Similar provisions are found in many state statutes. See, for example, Ohio Rev. Code Ann., Corporations, Section 1745.04 (Baldwin 1991); Md. Ann. Code art. 6-406(a)(2); and 12 Vt. Stat. Ann. Section 815 (Equity Pub. 1973).

53-712. Venue. — For purposes of venue, a nonprofit association is a resident of a county in which it has an office. [I.C., § 53-712, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Venue, unlike service of process, is treated by statute. See for example Mont. Code Ann. Section 25-2-118(1) (1991); 28 USCA 1391. A criterion used by all states for fixing venue is the country of residence of the defendant. Most states specify as many as eight additional grounds for venue, including the county in which the real estate that is the subject of the suit is situated and the county

in which the act causing, in whole or in part, the personal injury or other tort occurred. None of these additional criteria present a special problem with respect to an unincorporated, nonprofit association.

2. If an aggregate view of a nonprofit association were taken, the association is resident in any county in which a member resides. See Wright, Miller & Cooper, 15 *Federal Proce-*

dure & Practice 3812 (1986). Conforming to the entity view of an association, Section 12 [§ 53-712] rejects the common law view.

This section is bracketed because some states have already satisfactorily solved this problem.

States have by statute modified the common law rule. Illinois, for example, provides that “a voluntary unincorporated association sued in its own name is a resident of any county in which it has an office or if on due inquiry no office can be found, in which any

officer resides.” Ill. Code Civ. Prac. Section 2-102(c).

3. Section 12 [§ 53-712] makes a nonprofit association a resident of any county (or city) in which it has an office. If it has an office in five counties, for example, it may be sued in any of the five counties.

4. “City,” in brackets, is for use by those states, such as Virginia, in which there is territory that is not in a county but in a city only.

53-713. Uniformity of application and construction. — The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [I.C., § 53-713, as added by 1993, ch. 282, § 1, p. 952.]

53-714. Short title. — This chapter may be known and cited as the “Uniform Unincorporated Nonprofit Association Act.” [I.C., § 53-714, as added by 1993, ch. 282, § 1, p. 952.]

53-715. Effect of chapter upon other laws. — This chapter replaces existing law with respect to matters covered in this chapter but does not affect other law respecting nonprofit associations. [I.C., § 53-715, as added by 1993, ch. 282, § 1, p. 952.]

53-716. Transition concerning real and personal property. — (1) If, before the effective date of this chapter, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on the effective date of this chapter the estate or interest vests in the nonprofit association, unless the parties had treated the transfer as ineffective.

(2) If, before the effective date of this chapter, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after the effective date of this chapter the fiduciary may transfer the estate or interest to the nonprofit association in its name or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name. [I.C., § 53-716, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Section 19 [§ 53-716] brings to fruition the parties' expectations that previous law frustrated. Inasmuch as the common law did not consider an unincorporated, nonprofit association to be a legal entity, it could not acquire property. A gift of real or personal property thus failed. Reference in subsection (a) [subsection (1)] to the transfer as “purportedly” made identifies the document of transfer

as one not effective under the law. Subsection (a) [subsection (1)] gives effect to the gift. However, if parties were informed about the common law they may have treated the gift as ineffective. In that case, the final clause of subsection (a) [subsection (1)] provides that the gift does not become effective when this Act takes effect.

2. Section 19 [§ 53-716] should not be read

as a retroactive rule. It applies to the facts existing when this Act takes effect. At that time subsection (a) [subsection (1)] applies to a purported transfer of property that under the law of the jurisdiction could not be given effect at the time it was made. Subsection (a) [subsection (1)] belatedly makes it effective — effective when this Act takes effect and not when made. The practical result of this difference in when the purported transfer is effective is that the transfer is subject to interests in the property that came into being in the interim. The nonprofit association's interest is subject, for example, to a tax or judgment lien that became effective in the interim. An intervening transfer by the initial transferor may simply be evidence that the “parties had treated the transfer as ineffective.” If so, subsection (a) [subsection (1)] by its terms does not vest ownership in the nonprofit association.

3. Some courts gave effect to gift of property to an unincorporated, nonprofit association by determining that the gift lodged title in someone, often officers of the association, to hold the property in trust for the benefit of the association and its members. Subsection (b) [subsection (2)] addresses this situation. When the Act takes effect it authorizes the fiduciary to transfer the property to the association. If the fiduciary is unwilling or reluctant, the association may require the fiduciary to transfer the property to the association. In either case, the association will get a deed transferring the property to it which, in the case of real property, the association may record.

4. Jurisdictions may face one of three different legislative situations with respect to Section 19 [§ 53-716]. First, a jurisdiction may not have changed the common law. In that case, Section 19 [§ 53-716] fits its situation well. Subsections (a) and (b) [subsections (1) and (2)] address the two approaches taken by the courts under the common law. Secondly, a jurisdiction may have changed the common law so as to make effective transfers of real and personal property to some but not all nonprofit associations. In this case Section 19 [§ 53-716] should be made applicable to those nonprofit associations that did not have the benefit of the special acts. Thirdly, some jurisdictions may have extended to all nonprofit associations the privilege of acquiring in their names real and personal property. In this case, the jurisdiction does not need Section 19 [§ 53-716] and so should not adopt it.

5. Jurisdictions that have a statute like New York's concerning grants of property by will have a problem that needs special attention. The New York statute provides that a grant by will of real or personal property to an unincorporated association is effective only if the association incorporates within three years after probate of the will. McKinney's N.Y. Estates, Powers & Trust Law Section 3-1.3 (1991). The grants by will that need attention are those that have not become effective by incorporation of the association and have not become ineffective by the running of the three year period. These grants seem entitled to the benefits of Section 19 [§ 53-716]. If so, some modification of Section 19 [§ 53-716] may be required.

53-717. Savings clause. — This chapter does not affect any right accrued before this chapter takes effect or any action or proceeding then pending. [I.C., § 53-717, as added by 1993, ch. 282, § 1, p. 952.]

OFFICIAL COMMENT

1. Section 20 [§ 53-717] is adapted from RUPA Section 1006(c). It continues the prior law after the effective date of this Act with respect to a (i) “right accrued” and (ii) pending “action or proceeding.” But for this section the new law of this Act would displace the old in some circumstances. The power of a new act to displace the old statute with respect to conduct occurring before the new act's enactment is substantial. Millard H. Ruud, *The Savings Clause — Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court generally applies the law that exists at the time it acts.

2. Almost all states have general savings statutes, usually as a part of their statutory construction acts. These are often very broad. See, for example, Model Statutory Construction Act, Section 53. As this Act is remedial,

the more limited savings provisions is Section 20 [§ 53-717] are more appropriate than the broad savings provisions of the usual general savings clause. Section 20 [§ 53-717] and not a jurisdiction's general savings clause applies to the Act.

3. “*Right Accrued.*” It is not always clear whether an alleged right has “accrued.” Some courts have interpreted the phrase to mean that a “matured cause of action or legal authority to demand redress” exists. *Estate of Hoover v. Iowa Dept. of Social Services*, 299 Iowa 702, 251 N.W. 2d 529 (1977). In *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W. 2d 194 (1966), a landowner brought suit after the repeal of an act granting a landowner the right to recover from the state for damages to her land caused by the state's failure to install necessary culverts and the like to prevent

flooding. Before the act's repeal the landowner's land had been damaged by flooding caused by the state's failures. The court held that the statutory saving of "rights of action accrued" saved her cause of action. In both of these cases, conduct that gave rise to a cause of action had occurred before the act was repealed. It is said that it is not enough that there is an inchoate right. Apparently, there is no "accrued right" under a contract, for example, until there is a breach.

4. *"Action or Proceeding" Pending.* The principal question is what is an "action or proceeding" for this purpose. "Action" refers to a judicial proceeding. "Proceeding" alone, especially when used with "action," is broader and so includes administrative and other governmental proceedings. It has been given the broader meaning. For example, in *State ex rel. Carmean v. Board of Education of Hardin County*, 170 Ohio 2d 415, 165 N.E. 2d 918

(1960) a petition to transfer certain land from one school district to another filed before a change in the law was a "pending proceeding" to be decided under the old law. Similarly, a request for permission to petition for an election to consolidate school districts was held to be a "proceeding commenced" so that the substance and procedure of the old law, so that the substance and procedure of the old law, which was materially different from the new, was preserved. *Grant v. Norris*, 249 Iowa 236, 85 N.W. 2d 261 (1957).

5. RUPA provides that the Act does not "impair obligations of contract existing." This is not carried forward. This phrase is intended to save only obligations protect by the contracts clauses of state and federal constitutions. However, as it might be construed more broadly and the constitution would protect without the phrase, the phrase is not present in Section 20 [§ 53-717].

Index

A

ABANDONMENT.

Highways.

Municipal corporations.

Vacation of city streets, §50-311.

Streets.

Municipal corporations.

Vacation of streets, avenues, etc., §50-311.

ACCOUNTS AND ACCOUNTING.

Municipal corporations.

City treasurer, §50-208.

Council.

Examination of accounts of fiscal officers, §50-708.

Irrigation systems.

Adjustment and settlement of accounts with irrigation system in operation, §50-1831.

Mayor.

Power to require accounts from officers, §50-605.

Nuisances.

Moral nuisances.

Moneys received by defendant, §52-415.

Partnerships.

Dissolution and winding up.

Settlement of accounts and contributions among partners, §53-3-807.

ACKNOWLEDGMENTS.

Notaries public.

Power to take acknowledgments, §51-107.

ACTIONS.

Housing authorities.

Obligees of authority.

Remedies, §50-1920.

Power to sue and be sued, §50-1904.

Limited liability companies (repealed 7/1/2010).

Authority to sue on behalf of company, §53-659.

Effect of lack of authority, §53-660.

Members as parties to action, §53-620.

Penalties against foreign companies for transacting business without registering, §53-656.

ACTIONS —Cont'd

Limited liability companies

(repealed 7/1/2010) —Cont'd

Suits by and against companies, §53-658.

Withdrawal as breach of operating agreement, §53-641.

Limited partnerships.

Derivative actions, §§53-2-1002 to 53-2-1005.

Direct action by partner, §53-2-1001.

Dissolution, claims not known at time of.

Limitation of actions, §53-2-807.

Foreign limited partnerships.

Action by attorney general to restrain transacting of business, §53-2-908.

General partners.

Effect of actions by and against partnership and partners, §53-2-405.

Liability for consent to improper distributions, §53-2-509.

Improper distributions.

Limitation of actions, §53-2-509.

Order for signature or unsigned filing of document, §53-2-205.

Local economic development.

Contest of legality of ordinance, resolution or proceedings or bonds.

Limitations, §50-2911.

Local improvement districts.

Delinquency certificates.

Redemption action, §50-1750.

Municipal corporations.

City attorney.

Representation of city in all suits or proceeding in which city interested, §50-208A.

Damage claims against cities, §50-219.

Urban renewal.

Contest of legality of ordinance, resolution or proceedings or bonds.

Limitations, §50-2027.

Nuisances.

Abatement.

Action for damages not precluded by abatement, §52-110.

ACTIONS —Cont'd**Nuisances —Cont'd**

Authorized, §52-111.

Evidence, §52-409.

Moral nuisances, §52-111.

Priority of actions, §52-408.

Private persons.

When private person may maintain action, §52-204.

Remedies against public nuisances, §52-202.

Partnerships.

Actions by and against partnership and partners, §53-3-307.

Actions by partnership and partners, §53-3-405.

Policemen's retirement fund.

Board of commissioners.

Actions by and against board, §50-1508.

Public utilities.

Underground conversion of utilities.

Incorporation of certain provisions by reference, §50-2514.

Unincorporated nonprofit associations.

Capacity to assert and defend, §53-707.

Claim not abated by change of members or officers, §53-711.

Residency for purposes of venue, §53-712.

ADVANCEMENTS.**Partnerships.**

Mining partnerships.

Liability of purchaser for partners' liens for advancements, §53-407.

ADVERTISING.**Local improvement districts.**

Bids.

Advertisement for construction bids, §50-1710.

AERONAUTICS.**Municipal corporations.**

Acquisition, operation and maintenance of aviation facilities, §50-321.

Bond issues.

Revenue bonds generally, §§50-1027 to 50-1042.

AFFIDAVITS.**Municipal corporations.**

Disincorporation, §50-2214.

Notaries public.

Certification.

Power, §51-107.

AGE.**Notaries public.**

Qualifications for appointment, §51-104.

AGENTS.**Limited liability companies (repealed 7/1/2010).**

Members and managers, §53-616.

After dissolution, §53-645.

Limited liability partnerships.

Change of registered agent, §53-3-1001B.

Limited partnerships.

General partner as agent of partnership, §53-2-402.

Partnerships.

Limited liability partnerships.

Change of registered agent, §53-3-1001B.

Limited partnerships.

General partner as agent of partnership, §53-2-402.

Unincorporated nonprofit associations.

Appointment of agent to receive service of process, §53-710.

AGRICULTURE.**Municipal corporations.**

Separation of agricultural lands, §§50-226 to 50-233.

AIRPORTS.**Municipal airports.**

Acquisition, operation and maintenance of aviation facilities, §50-321.

ALCOHOLIC BEVERAGES.**Municipal corporations.**

Tax on liquor by the drink, wine and beer sold at retail.

Property tax alternatives for resort cities, §50-1046.

AMUSEMENT RESORTS.**Municipal corporations.**

Power to license and regulate, §50-308.

ANIMALS.**Municipal corporations.**

Running at large.

Powers as to animals running at large, §50-319.

APPEALS.**Community infrastructure districts.**

Final decisions of governing body or district board, §50-3119.

APPEALS —Cont'd

Limited liability companies
(repealed 7/1/2010).

Foreign limited liability companies.
Administrative cancellation of
registration, §53-655C.

Limited partnerships.

Reinstatement following
administrative dissolution.
Appeal of denial, §53-2-811.

Local improvement districts.

Assessments, §50-1718.

Municipal corporations.

Civil service.
Removals and suspensions,
§50-1609.
Elections.
City clerk.
Persons aggrieved by, §50-406.
Separation of agricultural lands,
§50-233.
Subdivisions.
Sanitary restrictions.
Reimposition, §50-1326.
Vacation, §50-1322.

APPROPRIATIONS.

Policemen's retirement fund,
§50-1506.

ARBITRATION.

Unincorporated nonprofit
associations.

Capacity to assert and defend,
§53-707.

ARREST.

Law enforcement officers.

Powers of policemen, §50-209.

Municipal corporations.

Elections.
Privilege of electors from arrest,
§50-411.
Vagrants.
Power to arrest, §50-308.

Police.

Powers of policemen, §50-209.

Vagrancy.

Municipal corporations.
Power to arrest vagrants, §50-308.

ASSIGNMENTS.

Limited liability companies
(repealed 7/1/2010).

Limited liability company interest,
§53-636.
Right of assignee to become
member, §53-638.

Policemen's retirement benefits,
§50-1517.

ASSIGNMENTS FOR BENEFIT OF
CREDITORS.

Limited liability companies
(repealed 7/1/2010).

Disassociation of member, §53-641.

ASSOCIATIONS.

Limited liability companies.

Provisions repealed 7/1/2010,
§§53-601 to 53-672.

Nonprofit associations.

Unincorporated associations
generally, §§53-701 to 53-717.

Unincorporated nonprofit
associations.

Generally, §§53-701 to 53-717.

ASSUMED BUSINESS NAMES,
§§53-501 to 53-510.

Amendment, §53-507.

Cancellation of certificate, §53-508.

Certificate.

Filing.
Fee, §53-510.
Required, §53-504.

Citation of act.

Short title, §53-501.

Contents, §53-505.

Continuation, §53-506.

Definitions, §53-503.

Duration, §53-506.

Fees.

Certificates, §53-510.

Filing.

Effect, §53-506.

Noncompliance with provisions.

Consequences, §53-509.

Purpose of act, §53-502.

Title of act.

Short title, §53-501.

ATTORNEY GENERAL.

Housing authorities.

Bond issues.
Certificate of attorney general,
§50-1919.

Limited partnerships.

Foreign limited partnerships.
Action by attorney general to
restrain transacting of
business, §53-2-908.

Nuisances.

Moral nuisances.
Who may maintain action, §52-402.

ATTORNEYS AT LAW.

City attorney, §50-204.

Limited liability companies.

Professional service limited liability
companies (repealed 7/1/2010),
§53-615.

ATTORNEYS AT LAW —Cont'd**Municipal corporations.**

City attorney, §50-204.

Professional service limited liability companies (repealed 7/1/2010), §53-615.**ATTORNEYS' FEES.****Limited partnerships.**

Derivative actions, §53-2-1005.

AUCTIONS AND AUCTIONEERS.**Municipal corporations.**

Real property.

Conveyance.

Sale to be at public auction,
§50-1403.**AUDITS AND AUDITORS.****Municipal corporations.**

City finances, §50-1010.

Filing of audit, §50-1010.

Industrial development program.

Public corporations.

Audit by state, §50-2707.

Urban renewal agencies, §50-2006.

Policemen's retirement fund.

Claims against fund, §50-1511.

AUTHORITIES.**Housing authorities.**

Generally, §§50-1901 to 50-1927.

B**BANKRUPTCY AND INSOLVENCY.****Limited liability companies (repealed 7/1/2010).**

Disassociation of members, §53-641.

Partnerships.Actions by and against partnership
and partners, §53-3-307.Events causing partner's
disassociation, §53-3-601.**BIDS AND BIDDING.****Local improvement districts.**Procedure for construction bids,
§50-1710.**Municipal corporations.**Business improvement districts,
§§50-2620, 50-2621.**BOARDS AND COMMISSIONS.****Municipal corporations, §50-210.**Power of mayor and council to
appoint, §50-210.**BOND ISSUES.****Definitions.**Private activity bond ceiling
allocation, §50-2801..**BOND ISSUES —Cont'd****Elections.**

Illegible ballots.

Not counted at bond elections,
§50-464.

Void ballots.

Not counted at bond elections,
§50-464.**Municipal corporations.**

City coupon bonds.

Amount.

Limitation, §50-1019.

Elections, §50-1026.

Notice, §§50-1026, 50-1026A.

Ordinances, §50-1026.

Pledge of revenues, §50-1026A.

Pledge of revenues, §50-1026A.

Purposes, §§50-1019, 50-1020.

Consolidation of cities.

Effect of consolidation on prior
obligations or proceedings,
§50-2111.No property to be taxed for prior
indebtedness, §50-2110.Payment of indebtedness,
§50-2109.

Definitions.

Revenue bonds, §50-1029.

Disincorporation.

Determination of indebtedness,
§50-2206.Payment of indebtedness,
§50-2208.

Elections.

City coupon bonds, §50-1026.

Notice, §§50-1026, 50-1026A.

Joint services.

Bond election in each city,
§50-1024.

Revenue bonds, §50-1035.

Notice, §50-1035.

Validation of bonds authorized at
previous elections, §50-1021.

Electricity.

Power plants.

City coupon bonds.

Issuance to acquire light and
power plants, §50-1020.Joint services, §§50-1022 to
50-1025.

Industrial development program.

Revenue bonds.

Commingling of proceeds,
§§50-2711, 50-2714.Contest of validity of issuance
proceedings, §50-2718.

Default.

Proceedings upon, §50-2717.

BOND ISSUES —Cont'd**Municipal corporations —Cont'd**

Industrial development program
—Cont'd

Revenue bonds —Cont'd

Defined, §50-2702.

Eligible investment, §50-2721.

Limitations on, §50-2706.

Maturity, §50-2710.

Powers of public corporations as
to, §50-2708.

Provisions, §50-2710.

Publication of resolution
authorizing issuance,
§50-2718.

Refunding, §50-2712.

Reports, §50-2709.

Tax exemption, §50-2719.

Terms of bonds, §50-2710.

Trust agreements, §50-2713.

Irrigation systems.

Allocation and accounting for
bonded indebtedness,
§50-1805A.

Coupon bonds.

Issuance, §50-1808.

Joint services.

Apportionment.

Agreement between cities on,
§50-1023.

Authorized, §50-1022.

Committee for construction or
purchase, §50-1025.

Elections.

Bond election in each city,
§50-1024.

Notice.

City coupon bonds.

Election, §50-1026.

Pledge of revenues to be
described in notice,
§50-1026A.

Revenue bonds.

Elections, §50-1035.

Ordinances.

City coupon bonds, §50-1026.

Pledge of revenues, §50-1026A.

Revenue bonds.

Authorization of issuance,
§50-1037.

Required prior to construction of
works, §50-1035.

Public utilities.

City coupon bonds.

Issuance to acquire utilities,
§50-1020.

Joint services, §§50-1022 to
50-1025.

BOND ISSUES —Cont'd**Municipal corporations —Cont'd**

Public utilities —Cont'd

Revenue bonds.

General provisions, §§50-1027 to
50-1042.

Purposes.

City coupon bonds, §§50-1019,
50-1020.

Revenue bonds, §§50-1027 to
50-1042.

Airport facilities and air-navigation
facilities.

Defined, §50-1029.

Authorized, §50-1028.

Bond anticipation notes, §50-1036.

Citation of act.

Short title, §50-1027.

Conditions, §50-1036.

Definitions, §50-1029.

Drainage system.

Defined, §50-1029.

Elections, §50-1035.

Notice, §50-1035.

Expenses may be incurred before
issue, §50-1034.

Form of bonds, §50-1036.

Interest.

Issuance of bonds at rate in
excess of original
specification, §50-1035A.

Issuance of bonds, §50-1037.

Liability.

City not liable on bonds,
§50-1040.

Lien of bonds, §50-1039.

Notice.

Elections, §50-1035.

Off-street parking.

Defined, §50-1029.

Ordinances.

Authorization of issuance,
§50-1037.

Required prior to construction of
works, §50-1035.

Powers of cities as to, §50-1030.

Preliminary expenses, §50-1034.

Self-supporting projects, §50-1032.

Sewerage systems.

Defined, §50-1029.

Taxation.

Exemption of projects and bonds,
§50-1042.

Levy to pay bonds.

Prohibited, §50-1041.

Title of act.

Short title, §50-1027.

Validity of bonds, §50-1038.

BOND ISSUES —Cont'd**Municipal corporations —Cont'd**

Revenue bonds —Cont'd

Water systems.

Defined, §50-1029.

Works.

Defined, §50-1029.

Revenue from, §50-1033.

Self-supporting, §50-1032.

Supervision, §50-1031.

Taxation.

Exemption, §50-1042.

Use, §50-1033.

Separation of agricultural lands.

Liability for bonded indebtedness,
§50-231.

Sewers.

City coupon bonds.

Issuance to acquire sewerage
systems, §50-1020.Joint services, §§50-1022 to
50-1025.

Revenue bonds.

General provisions, §§50-1027 to
50-1042.

Taxation.

Revenue bonds.

Exemption of projects and bonds,
§50-1042.

Levy to pay bonds.

Prohibited, §50-1041.

Urban renewal.

Contests of legality.

Limitations, §50-2027.

Cooperation by public bodies.

Power of municipalities to issue
bonds, §50-2015.

Definition of "bonds," §50-2018.

Generally, §50-2012.

Legal investments, §50-2013.

Obligees.

Defined, §50-2018.

Sale of bonds, §50-2012.

Validation.

Previous issues, §50-1021.

Water supply and waterworks.

City coupon bonds.

Issuance to acquire waterworks,
§50-1020.Joint services, §§50-1022 to
50-1025.

Revenue bonds.

General provisions, §§50-1027 to
50-1042.**Private activity bond ceiling****allocation**, §§50-2801 to 50-2805.

Allocation formula, §50-2803.

Authority of governor, §50-2804.

BOND ISSUES —Cont'd**Private activity bond ceiling
allocation —Cont'd**

Construction and interpretation.

Provisions of chapter, §50-2805.

Creation of obligation, debt or
liability of governmental units,
§50-2805.

Declaration of necessity, §50-2802.

Definitions, §50-2801.

Finding of necessity, §50-2802.

Formula for allocation, §50-2803.

Governor.

Authority, §50-2804.

Revenue bond act.Municipal corporations, §§50-1027 to
50-1042.**BONDS, SURETY.****Local improvement districts.**

Assessments.

Appeals, §50-1718.

Notaries public, §51-105.

Cancellation of bond.

Fee for filing, §51-121.

Removal from office.

Cancellation of bond, §51-114.

Nuisances.

Moral nuisances.

Actions instituted by private
persons.

Execution of bond, §52-402.

BORROWING MONEY.**Municipal corporations.**

Power to borrow money, §50-237.

BOUNDARIES.**Community infrastructure
districts.**

Change in boundaries, §50-3106.

Local improvement districts.Resolution of intention to create
district.Description of boundaries,
§50-1707.**BREACH OF THE PEACE.****Municipal corporations.**Powers as to maintenance of peace,
§50-308.**Nuisances.**

Abatement.

Abatement allowed without
committing breach of the
peace, §52-302.**BRIDGES.****Municipal corporations.**

Supervision generally, §50-313.

BUDGETS.**Municipal corporations.**

Annual budget, §50-1002.

Notice of hearing on, §50-1002.

BUILDINGS.**Municipal corporations.**

Destruction of buildings inimical to safety and health.

Powers of cities, §50-335.

Power to erect buildings, §50-301.

Urban renewal, §§50-2001 to 50-2032.

Nuisances.

Gambling.

Building where gambling carried on, §52-106.

Moral nuisances.

Leases.

Void if building used for lewd purposes, §52-414.

Urban renewal, §§50-2001 to 50-2032.**BUSINESS ASSOCIATIONS.****Assumed business names**, §§53-501 to 53-510.**Limited liability companies.**

Provisions repealed 7/1/2010, §§53-601 to 53-672.

Limited partnerships, §§53-2-101 to 53-2-1205.**Partnerships.**

Foreign limited liability partnerships, §§53-3-1101 to 53-3-1105.

Limited liability partnerships, §§53-3-1001 to 53-3-1003A.

Limited partnerships, §§53-2-101 to 53-2-1205.

New uniform partnership act, §§53-3-101 to 53-3-1205.

Unincorporated nonprofit associations, §§53-701 to 53-717.**BUSINESS IMPROVEMENT DISTRICTS.****Municipal corporations**, §§50-2601 to 50-2624.**BUSINESS NAMES.****Assumed business names**, §§53-501 to 53-510.**C****CARNIVALS.****Municipal corporations.**

Power to license and regulate, §50-308.

CARRIERS.**Municipal corporations.**

Power to regulate public carriers, §50-306.

CEMETERIES.**Municipal corporations.**

Acquisition.

Powers of cities, §50-320.

Powers of cities as to, §50-320.

Taxation.

Tax levy for acquisition of cemeteries, §50-320.

Vacation of cemeteries.

Plats or parts of plats of subdivisions, §50-1306A.

CENSUS.**Municipal corporations**, §50-214.

Incorporation, §50-103.

CHIROPRACTORS.**Limited liability companies.**

Professional service limited liability companies (repealed 7/1/2010), §53-615.

Professional service limited liability companies (repealed 7/1/2010), §53-615.**CIRCUSES.****Municipal corporations.**

Power to license and regulate, §50-308.

CITIES.**Municipal corporations.**

General provisions, §§50-101 to 50-2723.

CITY ATTORNEY, §§50-204, 50-208A.**CITY CLERK.****Appointment**, §50-204.**Bonds, surety**, §50-204.**Duties**, §50-207.

Elections.

Election day, §50-452.

Supervision of administration of election laws, §50-403.

Elections.

Appeals from clerk, §50-406.

Ballots and election supplies.

Clerk to provide, §50-438.

Duties.

Election day, §50-452.

Supervision of administration of election laws, §50-403.

Office.

Office of clerk to be open as long as polls open, §50-405.

Powers as to elections, §50-404.

CITY CLERK —Cont'd**Elections —Cont'd**

Transmission of supplies to city clerk
after votes counted, §50-466.

Journal of council proceedings,
§50-207.

Municipal records manager,
§50-908.

Oaths.

Power to administer oaths, §§50-207,
50-404.

CITY IRRIGATION SYSTEMS,
§§50-1801 to 50-1835.

CITY MANAGER PLAN.

General provisions, §§50-801 to
50-813.

CITY PROPERTY TAX

ALTERNATIVES ACT OF 1978,
§§50-1043 to 50-1049.

CITY TREASURER.

Accounts and accounting, §50-208.

Appointment, §50-204.

Bonds, surety, §50-204.

Duties, §50-208.

Financial statements.

Publication.

Duties, §50-1011.

Vacancy in office.

Failure to render accounts, §50-208.

CIVIL SERVICE.

Municipal corporations, §§50-1601
to 50-1610.

CLAIMS.

Limited liability companies
(repealed 7/1/2010).

Dissolution.

Disposal of known claim, §53-648.

Enforcement of unknown claims,
§53-649.

Policemen's retirement fund.

Audits, §50-1511.

False claims, §§50-1523, 50-1526.

Unincorporated nonprofit
associations.

Claim not abated by change of
members or officers, §53-711.

Claims by association against
members or members against
association, §53-707.

CODES.

Local improvement district code,
§§50-1701 to 50-1772.

COMMUNITY INFRASTRUCTURE
DISTRICTS, §§50-3101 to
50-3121.

Appeals.

Final decisions of governing body or
district board, §50-3119.

Bond issues.

Amount of indebtedness, §50-3107.

General obligation bonds,
§50-3108.

Dissolution of district.

Effect on obligations, §50-3116.

Elections.

Conduct of election, §50-3112.

General obligation bonds,
§50-3108.

Notice of election, §50-3112.

Revenue bonds, §50-3110.

Faith and credit of state not pledged,
§50-3107.

General obligation bonds, §50-3108.

Disclosure of obligations, §50-3115.

Powers of districts, §50-3105.

Proceeds.

Sources of revenue, §50-3107.

Refunding bonds.

General obligation bonds,
§50-3108.

Revenue bonds, §50-3110.

Special assessment bonds,
§50-3109.

Revenue bonds, §50-3110.

Special assessment bonds, §50-3109.

Disclosure of obligations, §50-3115.

Terms of bonds, §50-3111.

Boundaries.

Change, §50-3106.

Budget.

Annual budget, §50-3114.

Citation of act, §50-3101.

Contracts.

Power to enter into, §50-3105.

Creation, §50-3103.

Prerequisites, §50-3101.

Definitions, §50-3102.

Dissolution of district, §50-3116.

District board, §50-3104.

Appeals from final decisions of,
§50-3119.

Immunity, §50-3118.

District manager, §50-3104.

Elections.

Bond issues.

Conduct of election, §50-3112.

General obligation bonds,
§50-3108.

COMMUNITY INFRASTRUCTURE DISTRICTS —Cont'd

Elections —Cont'd

Bond issues —Cont'd

Notice of election, §50-3112.

Revenue bonds, §50-3110.

Conduct of elections, §50-3112.

Notice, §50-3112.

Exemptions and exclusions from provisions, §50-3117.

Finances, §50-3107.

Financial statements and estimates, §50-3114.

General plan, §50-3103.

Amendment, §50-3106.

Immunity, §50-3118.

Organization, §50-3104.

Petitions.

Creation of district, §50-3103.

Special assessments, §50-3109.

Powers, §50-3105.

Property taxes.

Costs of administration.

Levy for, §50-3113.

General obligation bonds.

Levy to pay debt service on,
§50-3108.

Personal property not subject to,
§50-3117.

Powers of districts, §50-3105.

Sources of revenue, §50-3107.

Purpose of act, §50-3101.

Severability of provisions, §50-3121.

Special assessments, §50-3109.

Sources of revenue, §50-3107.

State law.

Consistency with, §50-3120.

COMPLAINTS.

Limited partnerships.

Derivative actions, §53-2-1004.

COMPUTERIZED MAPPING SYSTEM.

Municipal corporations.

Definition, §50-345.

Fees, §50-345.

CONCEALED WEAPONS.

Municipal corporations.

Powers as to, §50-308.

CONFLICT OF LAWS.

Foreign limited liability companies (repealed 7/1/2010), §53-650.

Foreign limited liability partnerships, §53-3-1101.

Foreign limited partnerships.

Law governing generally, §53-2-901.

Housing authorities.

Act controlling, §50-1927.

CONFLICT OF LAWS —Cont'd

Limited liability companies (repealed 7/1/2010).

Foreign limited liability companies,
§53-650.

Governing law generally, §53-672.

Limited liability partnerships.

Foreign limited liability
partnerships, §53-3-1101.

Limited partnerships.

Foreign limited partnerships.

Law governing generally,
§53-2-901.

Partnerships.

Foreign limited liability
partnerships, §53-3-1101.

Foreign limited partnerships.

Law governing generally,
§53-2-901.

CONFLICTS OF INTEREST.

Municipal corporations.

Industrial development program,
§50-2705.

Urban renewal, §50-2017.

Notaries public.

Disqualifying interests, §51-108.

CONSENT.

Annexation.

Municipal corporations, §50-222.

Limited partnerships.

Proxies of partners for consent
purposes, §53-2-118.

CONSERVATORS.

Limited liability companies (repealed 7/1/2010).

Powers as to incompetent members'
estate, §53-639.

CONSOLIDATED LOCAL IMPROVEMENT DISTRICTS.

Authorized, §50-1728.

CONSOLIDATION OF CITIES,
§§50-2101 to 50-2114.

CONSTRUCTION AND INTERPRETATION.

Housing authorities.

Powers conferred, §50-1924.

Limited liability companies (repealed 7/1/2010).

Chapter, §53-668.

Interstate application, §53-671.

Severability of provisions, §53-670.

Limited partnerships.

Conversion and merger, §53-2-1113.

Electronic signatures in global
commerce act.

Relationship, §53-2-1203.

CONSTRUCTION AND INTERPRETATION —Cont'd

Limited partnerships —Cont'd

Savings clause, §53-2-1205.

Severability, §53-2-1202.

Uniformity of application and construction, §53-2-1201.

Policemen's retirement fund.

Liberal construction of provisions, §50-1518.

Unincorporated nonprofit association act.

Effect of chapter upon other laws, §53-715.

Savings clause, §53-717.

Supplementary general principles of law and equity, §53-702.

Territorial application, §53-703.

Uniformity of application and construction, §53-713.

CONTEMPT.

Nuisances.

Moral nuisances.

Violations of injunction or order contempt, §52-413.

Orders restraining removal of personal property from premises.

Violation of restraining order constitutes contempt, §52-404.

CONTRACTS.

Community infrastructure districts.

Power to enter into contracts, §50-3105.

Housing authorities.

Power to contract, §50-1904.

Limited liability companies (repealed 7/1/2010).

Liability of members to third parties, §53-619.

Local improvement districts.

Bids.

Procedure for construction bids, §50-1710.

Partnerships.

Mining partnerships.

Members cannot bind partnership, §53-409.

Recordation of contracts, §53-411.

Unincorporated nonprofit associations.

Beneficiary of contract, §53-704.

Liability in contract, §53-706.

CONVERSION.

Limited partnerships, §§53-2-1100 to 53-2-1113.

CONVERSION OF UTILITIES LAW (UNDERGROUND).

Underground conversion or

extension of utilities, §§50-2501 to 50-2523.

CONVEYANCES.

Health facilities.

Municipal corporations.

Conveyance of city hospital, §50-305.

Limited liability companies

(repealed 7/1/2010), §§53-633, 53-634.

Municipal corporations.

Conveyance of city hospital, §50-305.

Real property, §§50-1401 to 50-1409.

CORPORATIONS.

Assumed business names, §§53-501 to 53-510.

Business names.

Assumed business names, §§53-501 to 53-510.

Limited liability companies.

Provisions repealed 7/1/2010, §§53-601 to 53-672.

Municipal corporations.

General provisions, §§50-101 to 50-2723.

Names.

Assumed business names, §§53-501 to 53-510.

COSTS.

Limited partnerships.

Derivative actions, §53-2-1005.

Nuisances.

Moral nuisances.

Actions to abate, §52-411.

COUNCIL-MANAGER PLAN.

General provisions, §§50-801 to 50-813.

COUNTIES.

Local improvement districts.

General provisions, §§50-1701 to 50-1772.

Public utilities.

Underground conversion of utilities.

General provisions, §§50-2501 to 50-2523.

COUNTY CLERKS.

Elections.

Municipal elections.

Supervision of administration of election laws, §50-403.

COVENANTS.

Housing authorities.

Bond issues, §50-1918.

CRIMES AND OFFENSES.**Notaries public.**

- Conviction of serious crime.
- Definition of "serious crime," §51-102.
- Removal from office, §§51-113, 51-114.
- Criminal penalties, §51-119.

Nuisances.

- Obscenity.
- Immunity, §52-416.

Perjury.

- Municipal irrigation systems.
- Tax deeds.
- False swearing of affidavit, §50-1822.

Policemen's retirement fund.

- False claims against fund, §50-1526.

CRIMINAL PROCEDURE.**Municipal corporations.**

- City attorney.
- Prosecution of violations of ordinances, infractions and misdemeanors committed within municipal limits, §50-208A.

Nuisances.

- Actions to abate moral nuisances.
- Admissibility of admissions or findings of guilt, §52-409.
- Evidence of reputation admissible, §52-410.

D**DAMAGES.****Limited liability companies (repealed 7/1/2010).**

- Withdrawal as breach of operating agreement, §53-641.

Limited partnerships.

- Dissociation.
- General partners, wrongful dissociation, §53-2-604.
- False information in records, damages caused in reliance on, §53-2-208.

Municipal corporations.

- Claims against cities.
- Filing of damage claims, §50-219.

Nuisances.

- Abatement.
- Actions for damages not precluded by abatement, §52-110.
- Moral nuisances, §52-415.

DEATH.**Limited partnerships.**

- Disposition of assets at dissolution, liability of estate, §53-2-812.
- Powers of estate of deceased partner, §53-2-704.

Municipal corporations.

- Elections.
- Death of elector.
- Removal of name from election register, §50-427.

Notaries public.

- Cancellation of commission.
- Procedure, §51-116.
- Notice to secretary of state, §51-115.

Policemen's retirement fund.

- Benefits, §50-1516.
- Funeral benefits, §50-1516.

DEBTORS AND CREDITORS.**Limited liability companies (repealed 7/1/2010).**

- Rights of judgment creditors, §53-637.

Limited partnerships.

- Assets, disposition at dissolution, §53-2-812.
- Claims against general partner, barring of, §53-2-808.
- Claims known at time of dissolution, §53-2-806.
- Claims not known at time of dissolution, §53-2-807.
- Transferable interests.
- Creditor's rights, §53-2-703.

Partnerships.

- Limited partnerships.
- Assets, disposition at dissolution, §53-2-812.
- Claims against general partner, barring of, §53-2-808.
- Claims known at time of dissolution, §53-2-806.
- Claims not known at time of dissolution, §53-2-807.
- Transferable interests.
- Creditor's rights, §53-2-703.
- Mining partnerships.
- Liability of purchaser for partners' liens for debts and advancements, §53-407.
- Lien of creditors, §53-404.

DECEDENTS' ESTATES.**Limited liability companies (repealed 7/1/2010).**

- Powers of estate of deceased member, §53-639.

DECEDENTS' ESTATES —Cont'd**Limited partnerships.**

Disposition of assets at dissolution,
liability of estate, §53-2-812.

Powers of estate of deceased partner,
§53-2-704.

DEEDS.**Municipal corporations.**

Subdivisions.

Acknowledging and recording plat
equivalent to deed in fee
simple, §50-1312.

Nonprofit associations.

Statement of authority as to real
property executed as deed,
§53-705.

DEFINED TERMS.**Affidavit.**

Notaries public, §51-102.

Agencies.

Local economic development act,
§50-2903.

Urban renewal law, §50-2018.

Airport facilities and

air-navigation facilities.

Municipal finances, §50-1029.

Allied professional services.

Professional service limited liability
companies (repealed 7/1/2010),
§53-615.

Area of operation.

Housing authorities, §50-1903.

Urban renewal, §50-2018.

Articles of organization.

Limited liability companies (repealed
7/1/2010), §53-601.

Assessment area.

Community infrastructure districts,
§50-3102.

Assumed business names, §53-503.**Authorized municipality.**

Local economic development act,
§50-2903.

Base assessment roll.

Local economic development act,
§50-2903.

Bonds.

Housing authorities, §50-1903.

Private activity bonds, §50-2801.

Urban renewal, §50-2018.

Budget.

Local economic development,
§50-2903.

Business.

Business improvement districts,
§50-2602.

Uniform partnership act, §53-3-101.

DEFINED TERMS —Cont'd**Business entity.**

Limited liability companies (repealed
7/1/2010), §53-661.

**Certificate of limited partnership,
§53-2-102.****Certificates.**

Private activity bonds, §50-2801.

City.

Housing authorities, §50-1903.

Claims.

Limited liability companies (repealed
7/1/2010), §53-648.

Clerk.

Housing authorities, §50-1903.

Urban renewal, §50-2018.

**Clerk, attorney or other municipal
officer.**

Local improvement districts,
§50-1702.

Code.

Private activity bonds, §50-2801.

**Combination election record and
poll book.**

Municipal elections, §50-402.

Communication service.

Underground conversion of utilities,
§50-2502.

Community infrastructure.

Community infrastructure districts,
§50-3102.

**Community infrastructure
segment.**

Community infrastructure districts,
§50-3102.

**Competitively disadvantaged
border community area.**

Local economic development act,
§50-2903.

Computerized mapping system.

Municipal corporations, §50-345.

**Constituent limited partnership,
§53-2-1101.****Constituent organization.**

Limited partnerships, conversion and
merger, §53-2-1101.

Construction.

Municipal industrial development
program, §50-2702.

Contributions.

Limited partnerships, §53-2-102.

Convert.

Underground conversion of utilities,
§50-2502.

Converted organization.

Limited partnerships, conversion and
merger, §53-2-1101.

DEFINED TERMS —Cont'd

Converting limited partnership,
§53-2-1101.

Converting organization.

Limited partnerships, conversion and merger, §53-2-1101.

Corporation.

Limited liability companies (repealed 7/1/2010), §53-601.

Cost and expenses.

Local improvement districts,
§50-1702.

Council.

Local improvement districts,
§50-1702.

Court.

Limited liability companies (repealed 7/1/2010), §53-601.

Debtor in bankruptcy.

Limited partnerships, §53-2-102.

Debtor in partnership.

Uniform partnership act, §53-3-101.

Debt service.

Community infrastructure districts,
§50-3102.

Deteriorated area.

Local economic development act,
§50-2903.

Urban renewal, §50-2018.

Deteriorating area.

Urban renewal, §50-2018.

Distribution.

Limited partnerships, §53-2-102.
Uniform partnership act, §53-3-101.

District.

Community infrastructure districts,
§50-3102.

District board.

Community infrastructure districts,
§50-3102.

District development agreement.

Community infrastructure districts,
§50-3102.

Drainage system.

Municipal finances, §50-1029.

Easement.

Municipal subdivisions, §50-1301.

Election official.

Municipal elections, §50-402.

Election register.

Municipal elections, §50-402.

Electric or communication facilities.

Underground conversion of utilities,
§50-2502.

Employee.

Professional service limited liability companies (repealed 7/1/2010),
§53-615.

DEFINED TERMS —Cont'd**Engineer.**

Local improvement districts,
§50-1702.

Event of dissociation.

Limited liability companies (repealed 7/1/2010), §53-601.

Excess power.

Municipal corporations, §50-327.

Execution.

Uniform partnership act, §53-3-101.

Executive order.

Private activity bonds, §50-2801.

Extension.

Underground conversion of utilities,
§50-2502.

Facilities.

Local economic development act,
§50-2903.

Municipal industrial development program, §50-2702.

Federal government.

Housing authorities, §50-1903.

Urban renewal, §50-2018.

Financing document.

Municipal industrial development program, §50-2702.

Five years continuous service.

Policemen's retirement fund,
§50-1502.

Foreign.

Assumed business names, §53-503.

Foreign limited liability company.

Limited liability companies (repealed 7/1/2010), §53-601.

Foreign limited liability partnership, §53-3-101.

Limited partnerships, §53-2-102.

Foreign limited partnership.

Limited partnerships, §53-2-102.

Formally organized or registered entity.

Assumed business names, §53-503.

Functioning street department.

Municipal subdivisions, §50-1301.

General election.

Municipal elections, §50-402.

General partner.

Limited partnerships, §53-2-102.

Conversion and merger,
§53-2-1101.

Uniform partnership act, §53-3-901.

General plan.

Community infrastructure districts,
§50-3102.

Governing body.

Community infrastructure districts,
§50-3102.

DEFINED TERMS —Cont'd.**Governing body —Cont'd**

Housing authorities, §50-1903.

Underground conversion of utilities,
§50-2502.

Governing statute.

Limited partnerships, conversion and
merger, §53-2-1101.

Governmental unit.

Private activity bonds, §50-2801.

Housing project.

Housing authorities, §50-1903.

Idaho coordinate system.

Municipal subdivisions, §50-1301.

Improvements.

Municipal industrial development
program, §50-2702.

**Incapacitated in a degree which
prohibits efficient service.**

Policemen's retirement fund,
§50-1502.

Increment value.

Local economic development,
§50-2903.

Individual.

Assumed business names, §53-503.

Industrial development facilities.

Municipal industrial development
program, §50-2702.

**Interest in the limited liability
company.**

Limited liability companies (repealed
7/1/2010), §53-601.

Knowledge.

Limited liability companies (repealed
7/1/2010), §53-667.

Moral nuisances, §52-103.

Leave of absence.

Policemen's retirement fund,
§50-1502.

Legal entity.

Uniform partnership act, §53-3-101.

Legislative authority.

Business improvement districts,
§50-2602.

Lewd matter.

Moral nuisances, §52-103.

Lewdness.

Moral nuisances, §52-103.

Limited liability company interest.

Limited liability companies (repealed
7/1/2010), §53-601.

**Limited liability company
(repealed 7/1/2010), §53-601.****Limited liability limited**

partnership, §53-2-102.

Limited liability partnership.

Uniform partnership act, §53-3-101.

DEFINED TERMS —Cont'd**Limited partner, §53-2-102.**

Uniform partnership act, §53-3-901.

Limited partnership, §53-2-102.

Limited liability companies (repealed
7/1/2010), §53-601.

Uniform partnership act, §53-3-901.

Local governing body.

Local economic development act,
§50-2903.

Urban renewal, §50-2018.

Lot.

Underground conversion of utilities,
§50-2502.

Manager.

Limited liability companies (repealed
7/1/2010), §53-601.

**Mandatory retirement at age
sixty-five.**

Policemen's retirement fund,
§50-1502.

**Market value for assessment
purposes.**

Community infrastructure districts,
§50-3102.

Local economic development act,
§50-2908.

Matter.

Moral nuisances, §52-103.

Mayor.

Urban renewal, §50-2018.

Member.

Limited liability companies (repealed
7/1/2010), §53-601.

Unincorporated nonprofit
associations, §53-701.

Monument.

Municipal subdivisions, §50-1301.

Moral nuisance, §52-103.**Motion picture film.**

Moral nuisances, §52-103.

Municipality.

Local economic development act,
§50-2903.

Local improvement districts,
§50-1702.

Municipal industrial development
program, §50-2702.

Urban renewal, §50-2018.

**Nonprofit corporation or
organization, §53-701.****Notarial act, §51-102.****Notice.**

Limited liability companies (repealed
7/1/2010), §53-667.

Nuisance, §52-101.**Obligee.**

Housing authorities, §50-1903.

DEFINED TERMS —Cont'd

Obligee —Cont'd

Urban renewal, §50-2018.

Obligee of the authority.

Housing authorities, §50-1903.

Off-street parking.

Local improvement districts,
§50-1702.

Municipal finances, §50-1029.

Operating agreement.

Limited liability companies (repealed
7/1/2010), §53-601.

Ordinance.

Municipal industrial development
program, §50-2702.

Underground conversion of utilities,
§50-2502.

Organization.

Limited partnerships, conversion and
merger, §53-2-1101.

Organizational documents.

Limited partnerships, conversion and
merger, §53-2-1101.

**Overhead electric or
communication facilities.**

Underground conversion of utilities,
§50-2502.

Owner/ownership.

Community infrastructure districts,
§50-3102.

Municipal plats and vacations,
§50-1301.

Municipal subdivisions, §50-1301.

Paid policeman.

Policemen's retirement fund,
§50-1502.

Parcel.

Underground conversion of utilities,
§50-2502.

Partner.

Limited partnerships, §53-2-102.

Uniform partnership act, §53-3-901.

Partnership.

Uniform partnership act, §53-3-101.

Partnership agreement.

Limited partnerships, §53-2-102.

Uniform partnership act, §53-3-101.

Partnership at will.

Uniform partnership act, §53-3-101.

Partnership interest.

Uniform partnership act, §53-3-101.

**Partner's interests in the
partnership.**

Uniform partnership act, §53-3-101.

Person.

Assumed business names, §53-503.

Community infrastructure districts,
§50-3102.

DEFINED TERMS —Cont'd

Person —Cont'd

Limited liability companies (repealed
7/1/2010), §53-601.

Limited partnerships, §53-2-102.

Moral nuisances, §52-103.

Uniform partnership act, §53-3-101.

Unincorporated nonprofit
associations, §53-701.

Urban renewal, §50-2018.

Personal liability.

Limited partnerships, conversion and
merger, §53-2-1101.

**Person dissociated as a general
partner.**

Limited partnerships, §53-2-102.

Person of low income.

Housing authorities, §50-1903.

Place.

Moral nuisances, §52-103.

Plan.

Local economic development act,
§50-2903.

Plat.

Municipal subdivisions, §50-1301.

Principal office.

Limited partnerships, §53-2-102.

Private nuisance, §52-107.

Private road.

Municipal subdivisions, §50-1301.

Professional company.

Professional service limited liability
companies (repealed 7/1/2010),
§53-615.

Professional services.

Professional service limited liability
companies (repealed 7/1/2010),
§53-615.

Project.

Local economic development act,
§50-2903.

Private activity bonds, §50-2801.

Project costs.

Local economic development act,
§50-2903.

Municipal industrial development
program, §50-2702.

Property.

Uniform partnership act, §53-3-101.

Publication.

Moral nuisances, §52-103.

Public body.

Urban renewal, §50-2018.

Public highway agency.

Municipal subdivisions, §50-1301.

Public land survey corner.

Municipal subdivisions, §50-1301.
Plats and vacations, §50-1301.

DEFINED TERMS —Cont'd**Public officer.**

Urban renewal, §50-2018.

Public rights-of-way.

Municipal subdivisions, §50-1301.

Public service providers.

Franchises, §50-329A.

Public street.

Municipal plats and vacations,
§50-1301.

Municipal subdivisions, §50-1301.

Public utility.

Underground conversion of utilities,
§50-2502.

Qualified elector.

Community infrastructure districts,
§50-3102.

Municipal elections, §50-402.

Real property.

Housing authorities, §50-1903.

Urban renewal, §50-2018.

Records.

Limited partnerships, §53-2-102.

Reference monument.

Municipal subdivisions, §50-1301.

Rehabilitate existing electrical generating facilities.

Municipal finances, §50-1029.

Related activities.

Urban renewal, §50-2018.

Required information.

Limited partnerships, §53-2-102.

Residence.

Municipal elections, §50-402.

Resident.

Notaries public, §51-102.

Resident owner.

Local improvement districts,
§50-1702.

Revenue allocation area.

Local economic development act,
§50-2903.

Revenue bond.

Municipal industrial development
program, §50-2702.

Sales.

Moral nuisances, §52-103.

Sanitary restriction.

Municipal subdivisions, §50-1301.

Serious crime.

Notaries public, §51-102.

Sewerage system.

Municipal finances, §50-1029.

Sign.

Limited partnerships, §53-2-102.

Slum.

Housing authorities, §50-1903.

DEFINED TERMS —Cont'd**Special assessment.**

Community infrastructure districts,
§50-3102.

Special election.

Municipal elections, §50-402.

State.

Limited liability companies (repealed
7/1/2010), §53-601.

Limited partnerships, §53-2-102.

Local economic development act,
§50-2903.

Private activity bonds, §50-2801.

Uniform partnership act, §53-3-101.

Unincorporated nonprofit
associations, §53-701.

Statement.

Uniform partnership act, §53-3-101.

State sealing.

Private activity bonds, §50-2801.

Street.

Local improvement districts,
§50-1702.

Municipal subdivisions, §50-1301.

Subdivision.

Municipal plats and vacations,
§50-1301.

Surviving organization.

Limited partnerships, conversion and
merger, §53-2-1101.

Tally book.

Municipal elections, §50-402.

Tax.

Local economic development act,
§50-2903.

Taxable property.

Local economic development act,
§50-2903.

Taxing district.

Local economic development act,
§50-2903.

Termination date.

Local economic development,
§50-2903.

Transact business.

Assumed business names, §53-503.

Transaction.

Notaries public, §51-108.

Transferable interest.

Limited partnerships, §53-2-102.

Transferee.

Limited partnerships, §53-2-102.

Transfers.

Limited partnerships, §53-2-102.

Uniform partnership act, §53-3-101.

True names.

Assumed business names, §53-503.

DEFINED TERMS —Cont'd**Twenty-five years active service.**

Policemen's retirement fund,
§50-1502.

Twenty-five years of accumulated service.

Policemen's retirement fund,
§50-1502.

Underground electric or communication facilities,
§50-2502.**Urban renewal agency,** §50-2018.

Local economic development act,
§50-2903.

Urban renewal area, §50-2018.**Urban renewal plan,** §50-2018.

Local economic development act,
§50-2903.

Urban renewal project, §50-2018.

Local economic development act,
§50-2903.

User.

Municipal industrial development
program, §50-2702.

Verification.

Notaries public, §51-102.

Volume cap.

Private activity bonds, §50-2801.

Water system.

Municipal finances, §50-1029.

Witness corner.

Municipal subdivisions, §50-1301.

Workers' compensation law.

Policemen's retirement fund,
§50-1502.

Works.

Municipal finances, §50-1029.

DENTISTS.**Limited liability companies.**

Professional service limited liability
companies (repealed 7/1/2010),
§53-615.

Professional service limited liability companies (repealed 7/1/2010), §53-615.**DEPOSITIONS.****Notaries public.**

Certification.
Power, §51-107.

DEPOSITS.**Municipal corporations,** §50-1013.**DEVELOPMENT.****Economic development.**

Local economic development,
§§50-2901 to 50-2912.

DISABILITIES, PERSONS WITH. Elections.

Alternative voting procedure,
§50-460.

Assistance to voters, §50-460.

DISINCORPORATION OF MUNICIPAL CORPORATIONS.

General provisions, §§50-2201 to
50-2214.

DISSOLUTION OF LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010), §§53-643 to 53-649.**DISSOLUTION OF LIMITED PARTNERSHIPS,** §§53-2-801 to 53-2-812.**DISSOLUTION OF PARTNERSHIPS.**

General provisions, §§53-3-801 to
53-3-807.

DISTRICT COURTS.**Jurisdiction.**

Limited liability companies (repealed
7/1/2010), §53-669.

Limited liability companies (repealed 7/1/2010).

Execution and filing of articles and
documents.

Petition directing, §53-666.

Judicial dissolution, §53-643.

Jurisdiction, §53-669.

DISTRICTS.

Business improvement districts,
§§50-2601 to 50-2624.

Community infrastructure
districts, §§50-3101 to 50-3121.

Improvement districts.

Business improvement districts,
§§50-2601 to 50-2624.

Local improvement districts,
§§50-1701 to 50-1772.

Local improvement districts,
§§50-1701 to 50-1772.

Municipal corporations.

Business improvement districts,
§§50-2601 to 50-2624.

Community infrastructure districts,
§§50-3101 to 50-3121.

DIVERSION OF WATER.

Municipal irrigation systems,
§50-1833.

DRAINAGE.**Municipal corporations.**

Powers as to, §50-333.

E**EASEMENTS.****Municipal corporations.**

- Vacation of subdivision easements, §50-1325.
- Public utility easements, §50-1306A.

Subdivisions.

- Vacation of subdivision easements, §50-1325.
- Public utility easements, §50-1325.

ECONOMIC DEVELOPMENT.**Local economic development,**
§§50-2901 to 50-2912.**ELECTIONS.****Bond issues.**

- Illegible ballots.
- Not counted at bond elections, §50-464.
- Void ballots.
- Not counted at bond elections, §50-464.

Mayoral elections.

- Majority required for election, §50-612.

- Runoff elections, §50-612.

Municipal elections.

- General provisions, §§50-401 to 50-477.
- Mayoral elections, §50-612.

Oaths.

- Municipal corporations.
- City clerk.
- Power to administer oath, §50-404.
- Officers of elections.
- City clerk to administer oath, §§50-207, 50-452.
- Election judge may administer oaths, §50-456.

Recall elections.

- Municipal corporations.
- Applicable law, §50-472.

Run-off elections.

- Mayoral elections, §50-612.

ELECTRIC POWER.**Municipal corporations.**

- Power plants.
- Bond issues.
- City coupon bonds.
- Issuance to acquire light and power plants, §50-1020.
- Joint services, §§50-1022 to 50-1025.
- Contracts.
- Sale of excess power, §50-327.

ELECTRIC POWER —Cont'd**Municipal corporations —Cont'd**

- Power plants —Cont'd
- Excess power.
- Sale, §§50-325, 50-327.
- Lease or sale of plants.
- Procedure, §50-326.
- Powers as to, §50-325.
- Purchase or disposal of electric power, §50-342.

ELECTRONIC SIGNATURES AND FILINGS.**Limited liability companies (repealed 7/1/2010).**

- Annual reports for secretary of state, §53-613.

EMERGENCIES.**Municipal corporations.**

- Ordinances.
- Immediate operation in emergencies, §50-901.

EMINENT DOMAIN.**Housing authorities, §50-1914.****Municipal corporations.**

- Irrigation systems.
- Powers as to, §50-1801.
- Streets, §50-311.
- Urban renewal.
- Powers of urban renewal agencies, §§50-2007, 50-2010.

ENGINEERS.**Limited liability companies.**

- Professional service limited liability companies (repealed 7/1/2010), §53-615.

Professional service limited liability companies (repealed 7/1/2010), §53-615.**ENTITY TRANSACTIONS ACT.****Limited liability companies (repealed 2010).**

- Merger or consolidation.
- Applicability of entity transactions act, §53-660A.

EVIDENCE.**Judicial notice.**

- Municipal corporations.
- Corporate existence, §§50-104, 50-201.

Limited liability companies (repealed 7/1/2010).

- Filing of articles of organization.
- Compliance with conditions precedent required of organizers, §53-612.

EVIDENCE —Cont'd**Municipal corporations.**

Records.

Admissibility of copies, §50-909.

Nuisances.

Moral nuisances.

Actions for abatement, §52-409.

Evidence of reputation admissible, §52-410.

Reputation.

Actions to abate moral nuisances.

Evidence of reputation admissible, §52-410.

EXECUTIONS.**Housing authorities.**

Exemption of property of authority from execution sale, §50-1922.

Limited partnerships.

General partners, execution of judgments against, §53-2-405.

Municipal corporations.

Urban renewal.

Property of urban renewal agency.

Exemption from levy and sale by execution, §50-2014.

Policemen's retirement fund.

Exemption of benefits, §50-1517.

EXECUTORS AND**ADMINISTRATORS.****Limited liability companies (repealed 7/1/2010).**

Powers as to deceased members estate, §53-639.

EXPLOSIVES.**Municipal corporations.**

Powers as to hazardous materials, §50-310.

F**FEES.****Assumed business names.**

Certificates, §53-510.

Franchises.

Public service providers, §50-329A.

Limited liability companies (repealed 7/1/2010).

Filing, service and copying fee, §53-665.

Local improvement districts.

Assessments.

Delinquency certificates.

Fees of treasurer, §50-1749.

Municipal corporations.

Computerized mapping system, §50-345.

Public service providers.

Franchise fees, §50-329A.

FEES —Cont'd**Municipal corporations —Cont'd**

Subdivisions.

Plats.

Verification, §50-1305.

Notaries public, §51-110.

Excessive fees.

Official misconduct, §51-112.

Filing fees, §51-121.

Partnerships.

Schedule of fees, §53-3-105A.

Public service providers.

Franchises, §50-329A.

Public utilities.

Municipal corporations.

Franchise fees, §50-329A.

FELONIES.**Notaries public.**

Seals.

Stealing or wrongfully possessing notary's seal, §51-119.

FICTITIOUS NAMES.**Assumed business names, §§53-501 to 53-510.****FIDUCIARIES.****Limited partnerships.**

General partners, fiduciary duties, §53-2-408.

Municipal corporations.

Investments of deposits of deferred compensation plans.

Prudent investor act, §50-1013A.

Prudent investor act.

Municipal corporations.

Investments of deposits of deferred compensation plans, §50-1013A.

FINES AND OTHER PENALTIES.**Limited liability companies (repealed 7/1/2010).**

Foreign company transacting business without registration, §53-656.

FIRE PROTECTION.**Municipal corporations.**

Buildings.

Fire hazards.

Destruction of buildings inimical to safety.

Powers of cities, §50-335.

Fire zones.

Powers of cities as to, §50-309.

Powers of cities generally, §50-309.

FIREWORKS.**Municipal corporations.**

Power to prevent discharge of fireworks, §50-310.

FISCAL YEAR.**Municipal corporations**, §50-1001.**FLOOD PREVENTION.****Municipal corporations.**

Powers as to flood prevention, §50-333.

FOREIGN LIMITED LIABILITY**PARTNERSHIPS**, §§53-3-1101 to 53-3-1105.**FOREIGN LIMITED****PARTNERSHIPS**, §§53-2-901 to 53-2-908.**FORFEITURES.****Nuisances.**

Moral nuisances.

Personal property subject to forfeiture, §52-415.

Temporary forfeiture of use of real and personal property, §52-406.

FORMS.**Notaries public.**

Notarial acts, §51-109.

FRANCHISES.**Fees.**

Public service providers, §50-329A.

Municipal corporations.

Granting of franchises, §50-329.

Ordinances, §50-329.

Public service providers.

Fees, §50-329A.

Rates of franchise holders.

Power to regulate, §50-330.

Term of franchises, §50-329.

Public service providers, §50-329A.**FRAUD.****Notaries public.**

Official misconduct, §51-112.

FRESH PURSUIT.**Police.**

Powers of policemen, §50-209.

FUNDS.**Policemen's retirement fund,**

§§50-1501 to 50-1526.

Retirement.

Policemen's retirement fund, §§50-1501 to 50-1526.

G**GAMBLING.****Nuisances.**

Moral nuisances.

Buildings where gambling carried on, §52-106.

GARBAGE AND TRASH.**Municipal corporations.**

Solid waste disposal systems.

Maintenance and operation by cities, §50-344.

GENERAL LAWS.**Reorganization of cities organized under general laws**, §§50-2301 to 50-2308.**GEOLOGISTS.****Professional service limited****liability companies (repealed 7/1/2010)**, §53-615.**GIFTS.****Housing authorities.**

Donations to authorities, §50-1909.

GOOD FAITH.**Limited partners.**

Duties, §53-2-305.

Person erroneously believing self as limited partner, §53-2-306.

GUARDIANS.**Limited liability companies****(repealed 7/1/2010).**

Powers as to incompetent members' estate, §53-639.

H**HAZARDOUS MATERIALS.****Municipal corporations.**

Powers as to, §50-310.

HEALTH.**Municipal corporations.**

Boards of health, §50-304.

Powers as to public health, §50-304.

HEARINGS.**Local improvement districts.**

Assessments.

Hearing on assessment roll, §50-1714.

Notice, §§50-1712, 50-1713.

Creation of district, §50-1709.

HIGHWAY DISTRICTS.**Dedication of highways, streets and alleys.**

Acceptance of dedication by commissioners, §50-1313.

HIGHWAYS.**Abandonment and vacation.**

Municipal corporations.

Vacation of city streets, §50-311.

HIGHWAYS —Cont'd**Community infrastructure districts.**

General provisions, §§50-3101 to 50-3121.

Dedication.

Acceptance of dedication, §50-1313.

Local improvement districts.

General provisions, §§50-1701 to 50-1772.

Municipal corporations.

Supervision generally, §50-313.

Vacation of city streets, §50-311.

Nuisances.

Obstructing free passage or use.

Definition of nuisance, §52-101.

HOSPITALS.**Lease of hospital.**

City hospitals, §50-305.

Municipal corporations.

Conveyance or lease of city hospitals, §50-305.

Powers to acquire and maintain, §50-305.

Sales.

City hospitals, §50-305.

**HOTELS, INNS AND OTHER
TRANSIENT LODGING
PLACES.****Municipal corporations.**

Occupancy tax.

Property tax alternatives for resort cities, §50-1046.

Taxation.

Occupancy tax, §50-1046.

HOUSING.**Authorities.**

General provisions, §§50-1901 to 50-1927.

Housing authorities, §§50-1901 to 50-1927.

HOUSING AUTHORITIES,

§§50-1901 to 50-1927.

Actions.

Obligees of authority.

Remedies, §50-1920.

Power to sue and be sued, §50-1904.

Area of operation.

Defined, §50-1903.

Powers within, §50-1904.

Attorney general.

Bond issues.

Certificate of attorney general, §50-1919.

Bond issues, §50-1916.

Certificate of attorney general, §50-1919.

HOUSING AUTHORITIES —Cont'd**Bond issues —Cont'd**

Covenants, §50-1918.

Definition of "bonds," §50-1903.

Form of bonds, §50-1917.

Liability.

Limitations, §50-1916.

Obligee of authority.

Defined, §50-1903.

Remedies, §50-1920.

Additional remedies conferrable by authority, §50-1925.

Power to issue bonds, §50-1916.

Provisions of bonds and trust indentures, §50-1918.

Sale of bonds, §50-1917.

Citation of law.

Short title, §50-1901.

Commissioners.

Appointment, §50-1910.

Chairman, §50-1910.

Expenses, §50-1910.

Number, §50-1910.

Quorum, §50-1910.

Removal from office, §50-1911.

Terms of office, §50-1910.

Conflict of laws.

Act controlling, §50-1927.

Construction and interpretation.

Powers conferred, §50-1924.

Contracts.

Power to contract, §50-1904.

**Cooperation in undertaking
housing projects**, §50-1907.

Creation, §50-1905.

Definitions, §50-1903.

Donations to authorities, §50-1909.

Eminent domain, §50-1914.

Executions.

Exemption of property of authority from execution sale, §50-1922.

Gifts.

Donations to authorities, §50-1909.

Housing projects.

Building laws.

Subject to, §50-1915.

Cooperation in undertaking housing projects, §50-1907.

Defined, §50-1903.

Planning laws.

Subject to, §50-1915.

Powers as to, §50-1904.

Receivers.

Remedies of obligees of authority.

Additional remedies conferrable by authority, §50-1925.

Zoning laws.

Subject to, §50-1915.

HOUSING AUTHORITIES —Cont'd
Injunctions.

Remedies of obligee of authority,
§50-1920.

Investments.

Powers of authorities, §50-1904.

Judicial sales.

Exemption of property of authority,
§50-1922.

Legislative declaration, §50-1902.**Mandamus.**

Remedies of obligee of authority,
§50-1920.

Meetings.

Filing of minutes of meetings,
§50-1921.

Nonprofit operations, §50-1912.**Obligees of authority.**

Defined, §50-1903.

Remedies, §50-1920.

Additional remedies conferrable by
authority, §50-1925.

Petitions.

Creation of authorities, §50-1905.

Powers, §50-1904.

Construction of powers conferred,
§50-1924.

Eminent domain, §50-1914.

Real property.

Defined, §50-1903.

Powers as to, §50-1904.

Receivers.

Remedies of obligees of authority.

Additional remedies conferrable by
authority, §50-1925.

Rentals.

Guidelines, §§50-1912, 50-1913.

Reports.

Annual report, §50-1921.

Seals and sealed instruments.

Power to have and alter seal,
§50-1904.

Severability of provisions, §50-1926.**Slums.**

Defined, §50-1903.

Subpoenas.

Powers of authorities, §50-1904.

Taxation.

Exemptions, §50-1908.

Payments in lieu of taxes, §50-1908.

Tenants.

Selection, §50-1913.

Termination of authorities,

§50-1906.

Title of law.

Short title, §50-1901.

United States.

Federal government.

Aid from, §50-1923.

HOUSING AUTHORITIES —Cont'd
United States —Cont'd

Federal government —Cont'd

Defined, §50-1903.

Witnesses.

Powers as to witnesses, §50-1904.

Zoning.

Housing projects subject to zoning
laws, §50-1915.

I**IDAHO MUNICIPAL ELECTION**

LAWS, §§50-401 to 50-477.

IDAHO NOTARY PUBLIC ACT,

§§51-101 to 51-123.

IDAHO UNDERGROUND

CONVERSION OF UTILITIES

LAW, §§50-2501 to 50-2523.

IDAHO URBAN RENEWAL LAW OF

1965, §§50-2001 to 50-2032.

IMMUNITIES.

**Community infrastructure
districts, §50-3118.**

Nuisances.

Motion picture films.

Immunity of projectionists, ushers
or ticket takers, §52-416.

IMPROVEMENT DISTRICTS.

**Business improvement districts,
§§50-2601 to 50-2624.**

Local improvement districts,

§§50-1701 to 50-1772.

IMPROVEMENTS.**Highways.**

Local improvement districts.

General provisions, §§50-1701 to
50-1772.

Local improvement districts,

§§50-1701 to 50-1772.

INCOME WITHHOLDING.**Municipal corporations.**

Employees.

Wages.

Deductions from wages,
§50-1016.

Policemen's retirement fund.

Salary deductions, §50-1512.

INCOMPETENT PERSONS.**Limited liability companies**

(repealed 7/1/2010).

Powers of incompetent members'
estate, §53-639.

INCORPORATION.**Municipal corporations.**

Manner of original incorporation,
§§50-101 to 50-104.

INDEMNIFICATION.**Limited liability companies
(repealed 7/1/2010).**

Members and managers, §53-624.

INDICTMENTS.**Nuisances.**

Remedies against public nuisance,
§52-202.

Remedy by indictment.

Regulated by penal code,
§52-203.

**INDUSTRIAL DEVELOPMENT
PROGRAMS.****Municipal industrial development
programs, §§50-2701 to 50-2723.****INFORMATIONS.****Nuisances.**

Remedies against public nuisance,
§52-202.

Remedy of indictment or information
regulated by penal code, §52-203.

INFRACTIONS.**Municipal corporations.**

City attorney.

Prosecution of state traffic
infractions committed within
municipal limits, §50-208A.

INJUNCTIONS.**Housing authorities.**

Remedies of obligee of authority,
§50-1920.

**Limited liability companies
(repealed 7/1/2010).**

Foreign companies transacting
business without registering,
§53-656.

Limited partnerships.

Foreign limited partnerships.
Action by attorney general to
restrain transacting of
business, §53-2-908.

Nuisances.

Moral nuisances.

Temporary injunctions.

Application, §52-403.

Notice of hearing, §52-405.

Right to possession of real
property and personal
property after hearing on
temporary injunction,
§52-406.

INJUNCTIONS —Cont'd**Nuisances —Cont'd**

Violation of injunction contempt,
§52-413.

Temporary injunctions.

Nuisances.

Moral nuisances, §52-403.

Right to possession of real
property and personal
property after hearing on
temporary injunction,
§52-406.

INSURANCE.**Municipal corporations.**

Deductions from wages for insurance
premiums, §50-1016.

Policemen's retirement fund.

Power of board of commissioners to
insure risks, §50-1520.

INTEREST.**Limited partnerships.**

Interest rates, §53-2-107.

INTERPLEADER.**Limited partnerships.**

General partners.

Actions for improper distributions,
impleading of others,
§53-2-509.

INVESTMENTS.**Housing authorities.**

Powers of authorities, §50-1904.

Municipal corporations.

Authorized investments, §50-1013.

Deferred compensation plans.

Deposits governed by prudent
investor act, §50-1013A.

Industrial development program,
§50-2711.

Bonds eligible for investment,
§50-2721.

Urban renewal.

Bonds as legal investments,
§50-2013.

Powers of urban renewal agency,
§50-2007.

**IRRIGATION AND WATER
RIGHTS.****City irrigation systems, §§50-1801 to
50-1835.****Local improvement districts.**

Powers of governing bodies of
municipalities as to, §50-1703.

Municipal corporations.

Irrigation systems, §§50-1801 to
50-1835.

J**JAILS.****Municipal corporations.**

Violations of ordinances.

Confinement in city or county jail,
§50-302A.

JUDGMENTS.**Limited liability companies
(repealed 7/1/2010).**

Rights of judgment creditors,
§53-637.

Limited partnerships.

General partners, execution of
judgments against, §53-2-405.

Municipal corporations.

Payment of judgments, §50-217.

Separation of agricultural lands,
§50-230.

Appeal from judgment, §50-233.

Nuisances.

Moral nuisances.

Actions to abate, §52-411.

Content of final judgment and
order, §52-412.

**Unincorporated nonprofit
associations.**

Effect of judgment against
association, §53-708.

JUDICIAL NOTICE.**Municipal corporations.**

Corporate existence, §§50-104,
50-201.

JUDICIAL SALES.**Housing authorities.**

Exemption of property of authority,
§50-1922.

JURISDICTION.**District courts.**

Limited liability companies (repealed
7/1/2010), §53-669.

Limited partnerships.

Conversion and merger.

Foreign organization that is
converted.

Consent to jurisdiction,
§53-2-1105.

Foreign organization that is
survivor of merger.

Consent to jurisdiction,
§53-2-1109.

Municipal corporations.

Subdivisions.

Extraterritorial effects, §50-1306.

Streets within highway district,
§50-1330.

JURISDICTION —Cont'd

Notaries public, §51-107.

Nuisances.

Moral nuisances.

Actions to abate, §52-403.

Public utilities.

Underground conversion of utilities.

Effect of provisions on jurisdiction,
§50-2520.

L**LABOR AND EMPLOYMENT
RELATIONS.****Civil service.**

Municipal corporations, §§50-1601 to
50-1610.

Municipal corporations.

Civil service, §§50-1601 to 50-1610.

LAPSE.**Nuisances.**

Public nuisances not legalized by
lapse of time, §52-201.

LAW ENFORCEMENT OFFICERS.**Arrest.**

Powers of policemen, §50-209.

Fresh pursuit.

Powers of policemen, §50-209.

Funds.

Retirement fund, §§50-1501 to
50-1526.

Powers of policemen, §50-209.**Retirement.**

Policemen's retirement fund,
§§50-1501 to 50-1526.

LEASES.**City hospitals, §50-305.****Hospitals.**

Lease of city hospital, §50-305.

Municipal corporations.

Business improvement districts.

Disclosure requirements, §50-2623.

Notification, §50-2624.

City hospitals, §50-305.

Mining property.

Lease by city, §50-234.

Nuisances.

Moral nuisances.

Lease void if building used for
lewd purposes, §52-414.

LIABILITY.**Limited partnerships.**

Contributions.

Obligation to contribute, §53-2-502.

LIABILITY —Cont'd**Limited partnerships —Cont'd**

Conversion and merger.

Liability of general partner
following conversion or merger,
§53-2-1111.

Limitations and restrictions on
conversion and merger,
§53-2-1110.

Dissociation.

Binding of partnership after
dissociation but before
dissolution, §53-2-606.

Liability for obligations prior to
and after dissociation,
§53-2-607.

Wrongful dissociation, §53-2-604.

Dissolution.

Liability for obligations incurred
after, §53-2-805.

Distributions.

Improper distributions, §53-2-509.

General partners, liability of
generally, §53-2-404.

Limited partners, liability generally,
§53-2-303.

Partnership, liability for actionable
conduct of general partner,
§53-2-403.

Local improvement districts.

Bond issues.

Liability of municipality, §50-1723.

Municipal corporations.

Bond issues.

Revenue bonds.
City not liable on bonds,
§50-1040.

Notaries public.

Civil liability of notary public and
employer, §51-118.

Nuisances.

Continuing nuisances.

Liability of successive owners,
§52-109.

Partnerships.

Mining partnerships.

Liability of purchaser for partners'
liens for debts and
advancements, §53-407.

Liens resulting from relation of
partners, §53-408.

Policemen's retirement fund.

Personal liability of board members
or their employees, §50-1510.

LICENSES AND PERMITS.**Municipal corporations.**

Amusements, §50-308.

LICENSES AND PERMITS —Cont'd**Municipal corporations —Cont'd**

Fees.

Disposition, §50-1015.

Occupations and businesses.

Power to levy and collect license
fees, §50-307.

Occupations and businesses.

Power to collect license fees,
§50-307.

LIENS.**Limited partnerships.**

Transferable interests.

Creditor's rights, §53-2-703.

Local improvement districts.

Assessments, §50-1721.

Foreclosure, §50-1721.

Municipal corporations.

Bond issues.

Revenue bonds, §50-1039.

Irrigation systems.

Assessments, §50-1813.

Nuisances.

Moral nuisances.

Actions to abate.

Lien as to expenses, §52-415.

Partnerships.

Limited partnerships.

Transferable interests.

Creditor's rights, §53-2-703.

Mining partnerships.

Liability of purchaser for liens
resulting from relation of
partners, §53-408.

Lien of partners and creditors,
§53-404.

Partner's transferable interests
subject to charging order,
§53-3-504.

LIMITATION OF ACTIONS.**Limited liability companies**

(repealed 7/1/2010).

Claims against dissolved companies,
§53-648.

Limited partnerships.

Dissolution, claims not known at
time of, §53-2-807.

Improper distributions, §53-2-509.

Local economic development.

Contest of legality of ordinance,
resolution or proceedings or
bonds authorized, §50-2911.

Municipal corporations.

Irrigation systems.

Actions to quiet title against or
test validity of assessment,
§50-1829.

LIMITATION OF ACTIONS —Cont'd**Municipal corporations —Cont'd**

Subdivisions.

Vacation.

Actions to establish adverse rights or question validity of vacation, §50-1323.

Urban renewal.

Contest of legality of ordinance, resolution or proceedings or bonds, §50-2027.

Public utilities.

Underground conversion of utilities, §50-2514.

LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010), §§53-601 to 53-672.**Accounting by members and managers.**

Profit or benefit derived without consent of disinterested managers or members, §53-622.

Acquisition of property, §53-633.**Actions.**

Authority to sue on behalf of company, §53-659.

Effect of lack of authority, §53-660.

Foreign companies transacting business without registering, §53-656.

Members as parties to action, §53-620.

Suits by and against companies, §53-658.

Withdrawal as breach of operating agreement, §53-641.

Activities not constituting transacting business, §53-657.**Administrative cancellation of registration.**

Foreign limited liability companies, §§53-655A to 53-655C.

Administrative dissolution,

§§53-643A to 53-643C.

Effect of, §53-643B.

Grounds, §53-643A.

Procedure, §53-643B.

Reinstatement, §53-643C.

Admission of members and managers, §§53-617, 53-640.**Agency power of members and managers, §53-616.**

After dissolution, §53-645.

Amendment of articles of organization, §53-609.**Annual reports, §53-613.****Articles of amendment, §53-609.****LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010) —Cont'd****Articles of dissolution, §53-647.**

Filing presumed to constitute notice, §53-645.

Articles of merger or consolidation, §53-663.**Articles of organization, §53-608.**

Amendment, §53-609.

Effect of filing, §53-612.

Execution of documents, §53-610.

Filing with secretary of state, §53-611.

Formation, §53-607.

Restatement, §53-609.

Assignees as members, §53-638.**Assignment for benefit of creditor.**

Disassociation of member, §53-641.

Assignment of limited liability company interest, §53-636.

Right of assignee to become member, §53-638.

Attorney-in-fact.

Execution of documents, §53-610.

Bankruptcy.

Disassociation of member, §53-641.

Binding effect of acts of members and managers, §53-616.

After dissolution, §53-645.

Breach of operating agreement.

Withdrawal of breach, §53-641.

Claims against dissolved companies.

Disposal, §53-648.

Enforcement of unknown claim, §53-649.

Conflict of laws.

Foreign limited liability companies, §53-650.

Governing law generally, §53-672.

Consolidation, §53-661.

Approval, §53-662.

Articles, §53-663.

Effects, §53-664.

Entity transactions act.

Applicability, §53-660A.

Rights, privileges, etc., of surviving entity, §53-664.

Construction of chapter, §53-668.**Contents of articles of organization, §53-608.****Contracts.**

Liability of members to third parties, §53-619.

Contributions to capital, §53-626.

Liability for contributions, §53-627.

Repaying members, §53-628.

Conveyances, §§53-633, 53-634.

LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010) —Cont'd

Damages.

Withdrawal as breach of operating agreement, §53-641.

Debts, obligations or liability of companies.

Member's liability to third parties, §53-619.

Deceased members' estates.

Powers, §53-639.

Deceptively similar company names, §53-602.

Definitions, §53-601.

Allied professional services, §53-615.

Business entity.

Merger or consolidation, §53-661.

Claim, §53-648.

Employee.

Professional service limited liability companies, §53-615.

Knowledge, §53-667.

Notice, §53-667.

Professional company, §53-615.

Professional service, §53-615.

Disassociation of members.

Distributions, §53-630.

Events, §53-641.

Dissolution, §53-642.

Administrative dissolution, §§53-643A to 53-643C.

Agency powers of managers or members after dissolution, §53-645.

Articles of dissolution, §53-647.

Distribution of assets, §53-646.

Judicial dissolution, §53-643.

No claims against, §53-648.

Unknown claims against companies, §53-649.

Winding up, §53-644.

Distributions.

Assets upon winding up, §53-646.

Disassociation of member, §53-630.

In kind, §53-631.

Right to distributions, §53-632.

Sharing of interim distributions, §53-629.

Duties of managers and members, §53-622.

Events of disassociation, §53-641.

Events of dissolution, §53-642.

Judicial dissolution, §53-643.

Execution of documents, §53-610.

Annual reports, §53-613.

Articles of merger or consolidation, §53-663.

Petition to direct execution, §53-666.

LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010) —Cont'd

Execution of documents —Cont'd

Property transfers, §53-634.

Filing articles of organization, §53-612.

Filing, service and copying fees, §53-665.

Foreign limited liability companies.

Activities not constituting transacting business, §53-657.

Administrative cancellation of registration, §§53-655A to 53-655C.

Annual report, §53-613.

Law governing, §53-650.

Name, §53-653.

Reservation, §53-603.

Notice of amendment of registration, §53-654.

Registration, §53-651.

Administrative cancellation, §§53-655A to 53-655C.

Amendment, §53-654.

Cancellation, §53-655.

Issuance, §53-652.

Name requirement, §53-653.

Transaction of business without, §53-656.

Transaction of business without registration, §53-656.

Transactions not constituting transacting business, §53-657.

Formation, §53-607.

Governing law, §53-672.

Gross negligence.

Liability of members or managers, §53-622.

Incompetent members' estate powers, §53-639.

Indemnification of members and managers, §53-624.

Information required of companies, §53-625.

Injunctions.

Foreign companies transacting business without registering, §53-656.

In kind distributions, §53-631.

Inspection of records by members, §53-625.

Interstate application of chapter, §53-671.

Judgment creditor rights, §53-637.

Judicial dissolution, §53-643.

Jurisdiction of district courts, §53-669.

**LIMITED LIABILITY COMPANIES
(REPEALED 7/1/2010) —Cont'd**

- Knowledge of members or managers charged to companies, §53-618.**
 - Knowledge defined, §53-667.
- Liability for contributions to capital, §53-627.**
- Liability of members to third parties, §53-619.**
- Limitation of actions.**
 - Claims against dissolved companies, §53-648.
- Limitation of liability of members and managers, §53-624.**
- Limited liability company interest.**
 - Assignment, §53-636.
 - Issuance in exchange for cash, property, etc., §53-626.
 - Nature of, §53-635.
- Management of companies, §53-621.**
- Managers.**
 - Admission, §53-617.
 - Agency powers after dissolution, §53-645.
 - Agents of company, §53-616.
 - Authority to sue on behalf of company, §53-659.
 - Effect of lack of authority to sue, §53-660.
 - Duties, §53-622.
 - Limitation of liability and indemnification, §53-624.
 - Management of company, §53-621.
 - Notice or knowledge of manager charged to company, §53-618.
 - Voting, §53-623.
- Members.**
 - Admission, §§53-617, 53-640.
 - Agency powers after dissolution, §53-645.
 - Agents of company, §53-616.
 - Approval of merger or consolidation, §53-662.
 - Assignees as members, §53-638.
 - Authority to sue on behalf of company, §53-659.
 - Effect of lack of authority to sue, §53-660.
 - Deceased or incompetent members.
 - Powers of estate, §53-639.
 - Duties, §53-622.
 - Effective date of admission, §53-640.
 - Events of disassociation, §53-641.
 - Inspection of records, §53-625.
 - Liability for contribution, §53-627.
 - Liability to third parties, §53-619.

**LIMITED LIABILITY COMPANIES
(REPEALED 7/1/2010) —Cont'd**

- Members —Cont'd**
 - Limitation of liability and indemnification, §53-624.
 - Management of company, §53-621.
 - Notice or knowledge of member charged to company, §53-618.
 - Parties to actions, §53-620.
 - Removal, §53-641.
 - Repayment of contributions to capital, §53-628.
 - Sharing in distribution, §53-629.
 - Disassociation of member, §53-630.
 - In kind distributions, §53-631.
 - Right to distribution, §53-632.
 - Voting, §53-623.
 - Withdrawal, §53-641.
- Merger, §53-661.**
 - Approval, §53-662.
 - Articles, §53-663.
 - Effects, §53-664.
 - Entity transactions act.
 - Applicability, §53-660A.
 - Rights, privileges, etc., of surviving entity, §53-664.
- Name, §53-602.**
 - Foreign limited liability companies.
 - Requirements for registration, §53-653.
 - Reservation, §53-603.
- Nature of business, §53-605.**
- Nature of limited liability company interest, §53-635.**
- Notice defined, §53-667.**
- Notice of amendment of foreign company registration, §53-654.**
- Notice of dissolution.**
 - Filing articles of dissolution, §53-645.
- Notice of withdrawal, §53-641.**
- Notice or knowledge of members and managers, §53-618.**
- Notice to claimants of dissolution, §53-648.**
- Ownership, §53-633.**
- Parties to actions, §53-620.**
- Penalties.**
 - Foreign company transacting business without registration, §53-656.
- Personal property.**
 - Nature of limited liability company interest, §53-635.
- Petition to direct execution and filing of articles or documents, §53-666.**
- Power of attorney.**
 - Execution of documents, §53-610.

LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010) —Cont'd

Presumption of notice of dissolution.

Filing articles of dissolution, §53-645.

Professional service limited liability companies, §53-615.

Name, §53-602.

Profit sharing, §53-628.

Property ownership, §53-633.

Property transfers, §53-634.

Purposes of business, §53-605.

Records, §53-625.

Removal of member, §53-641.

Reorganization.

Disassociation of member, §53-641.

Reports.

Annual report, §53-613.

Reservation of name, §53-603.

Restated articles of organization, §53-609.

Severability of chapter, §53-670.

Sharing of interim distributions, §53-629.

Sharing of profits, §53-628.

Statute of limitations.

Claims against dissolved companies,
§53-648.

Suits by and against companies, §53-658.

Torts.

Liability of members to third parties,
§53-619.

Transactions not constituting transacting business, §53-657.

Transfer of property, §53-634.

Voting, §53-623.

Willful misconduct.

Liability of members or managers,
§53-622.

Winding up, §53-644.

Agency powers of managers or
members after dissolution,
§53-645.

Distribution of assets, §53-646.

Withdrawal of member, §53-641.

LIMITED LIABILITY PARTNERSHIPS.

Foreign limited liability partnerships, §§53-3-1001 to 53-3-1105.

Generally, §§53-3-1001 to 53-3-1003A.

LIMITED PARTNERSHIPS, §§53-2-101 to 53-2-1205.

Actions.

Derivative actions, §§53-2-1002 to
53-2-1005.

LIMITED PARTNERSHIPS —Cont'd Actions —Cont'd

Direct action by partner, §53-2-1001.

General partners.

Effect of actions by and against
partnership and partners,
§53-2-405.

Liability for consent to improper
distributions, §53-2-509.

Agents.

General partners.

Agent of partnership, §53-2-402.

Applicability of provisions.

Existing relationships, §53-2-1204.

Foreign limited partnerships,
§53-2-901.

Law governing relationships and
liability, §53-2-106.

Partnership agreement, effect and
scope, §53-2-110.

Principles of law and equity,
§53-2-107.

Uniformity of application and
construction, §53-2-1201.

Articles of conversion, §53-2-1104.

Articles of merger, §53-2-1108.

Business transactions of partner with partnership, §53-2-112.

Certificate of authority, foreign limited partnerships.

Activities not constituting
transactions of business,
§53-2-903.

Application, §53-2-902.

Cancellation, §53-2-907.

Filing, §53-2-904.

Revocation, §53-2-906.

Certificate of limited partnership.

Amendment, §53-2-202.

Certificate of existence, §53-2-209.

Contents, §53-2-201.

Filing.

Constructive notice, §53-2-103.

Required, §53-2-201.

Restatement, §53-2-202.

Signing of records, §§53-2-204,
53-2-205.

Citation of provisions, §53-2-101.

Conflicting names.

Application for authorization to use,
§53-2-108.

Consent of partners.

Actions taken requiring, §53-2-118.

Construction of statutory provisions.

Conversion and merger, §53-2-1113.

Electronic signatures in global
commerce act.

Relationship, §53-2-1203.

LIMITED PARTNERSHIPS —Cont'd**Construction of statutory provisions —Cont'd**

- Savings clause, §53-2-1205.
- Severability, §53-2-1202.
- Uniformity of application and construction, §53-2-1201.

Contributions.

- Conversion and merger.
 - Liability of general partner following conversion or merger, §53-2-1111.
- Disposition of assets at dissolution, §53-2-812.
- Form of contribution, §53-2-501.
- Obligation to contribute, §53-2-502.

Conversion and merger, §§53-2-1100 to 53-2-1113.

- Articles of conversion, §53-2-1104.
- Articles of merger, §53-2-1108.
- Construction of statutory provisions, §53-2-1113.
- Definitions, §53-2-1101.
- Effective date of conversion, §53-2-1104.
- Effect of conversion, §53-2-1105.
- Effect of merger, §53-2-1109.
- Foreign organization that is converted.
 - Consent to jurisdiction, §53-2-1105.
- Foreign organization that is survivor of merger.
 - Consent to jurisdiction, §53-2-1109.
- Liability of general partner following conversion or merger, §53-2-1111.
- Limitations and restrictions on conversion and merger, §53-2-1110.
- Plan of conversion, §53-2-1103.
- Plan of merger, §§53-2-1106, 53-2-1107.
- Power to bind organization following conversion or merger, §53-2-1112.
- Prerequisites to conversion, §53-2-1102.
- Prerequisites to merger, §53-2-1106.

Conversion to partnership, §53-3-903.**Correcting of filed records, §53-2-207.****Creditor's rights.**

- Assets, disposition at dissolution, §53-2-812.
- Claims against general partner, barring of, §53-2-808.
- Claims known at time of dissolution, §53-2-806.

LIMITED PARTNERSHIPS —Cont'd
Creditor's rights —Cont'd

- Claims not known at time of dissolution, §53-2-807.
- Transferable interests, §53-2-703.

Death of partner.

- Disposition of assets at dissolution, liability of estate, §53-2-812.
- Powers of estate of deceased partner, §53-2-704.

Definitions, §53-2-102.

- Conversion and merger, §53-2-1101.

Delivery of records to secretary of state, §53-2-206.**Derivative actions, §§53-2-1002 to 53-2-1005.**

- Complaints, §53-2-1004.
- Proceeds and costs, §53-2-1005.
- Proper plaintiff, §53-2-1003.
- Right to maintain, §53-2-1002.

Dissociation, §§53-2-601 to 53-2-607.

- Conversion and merger.
 - Power to bind organization following conversion or merger, §53-2-1112.
- Distributions not made due to, §53-2-505.
- General partners, §53-2-603.
 - Binding of partnership after dissociation but before dissolution, §53-2-606.
 - Effect of dissociation, §53-2-605.
 - Liability for obligations prior to and after dissociation, §53-2-607.
 - Wrongful dissociation, §53-2-604.
- Limited partners, §53-2-601.
 - Effect of dissociation, §53-2-602.
- Notice of, §53-2-103.

Dissolution, §§53-2-801 to 53-2-812.

- Administrative dissolution, §53-2-809.
 - Reinstatement following, §53-2-810.
 - Appeal of denial, §53-2-811.
- Assets, disposition of, §53-2-812.
- Barring of claims against dissolved limited partnership.
 - General partner, claims against, §53-2-808.
 - Known claims, §53-2-806.
 - Unknown claims, §53-2-807.
- Claims against general partner, barring of, §53-2-808.
- Claims known at time of dissolution, §53-2-806.
- Claims not known at time of dissolution, §53-2-807.

LIMITED PARTNERSHIPS —Cont'd**Dissolution —Cont'd**

- General partner, claims against, §53-2-808.
- Judicial dissolution, §53-2-802.
- Liability for obligations incurred after, §53-2-805.
- Nonjudicial dissolution, §53-2-801.
- Power to bind partnership after, §53-2-804.
- Requirements for nonjudicial dissolution, §53-2-801.
- Statement of termination, §53-2-203.
- Signatures, §§53-2-204, 53-2-205.
- Winding up, §53-2-803.

Distributions.

- Dissociation, no distribution due to, §53-2-505.
- Form, §53-2-506.
- Improper distributions, §53-2-509.
- In kind distribution, §53-2-506.
- Interim distributions, §53-2-504.
- Limitations and restrictions, §53-2-508.
- Offsets for amounts owed to partnership, §53-2-507.
- Right to generally, §53-2-507.
- Sharing among partners, §53-2-503.

Dual capacity of partner, §53-2-113.**Duration of entity, §53-2-104.****Electronic signatures in global commerce act.**

- Relationship, §53-2-1203.

Existing relationships, applicability, §53-2-1204.**False information in records, §53-2-208.****Filing of records by secretary of state, §53-2-206.****Foreign limited partnerships, §§53-2-901 to 53-2-908.**

- Action by attorney general to restrain transacting of business, §53-2-908.
- Activities not constituting transactions of business, §53-2-903.
- Certificate of authority.
 - Activities not constituting transactions of business, §53-2-903.
- Application, §53-2-902.
- Cancellation, §53-2-907.
- Filing, §53-2-904.
- Revocation, §53-2-906.
- Law governing, §53-2-901.
- Names, §53-2-905.

LIMITED PARTNERSHIPS —Cont'd**Foreign limited partnerships****—Cont'd**

- Ownership of property.
 - Activities constituting transactions of business, §53-2-903.

Formation, §§53-2-201 to 53-2-210.**General partners, §§53-2-401 to 53-2-408.**

- Actions by and against partnership and partners, §53-2-405.
- Agent of partnership, §53-2-402.
- Becoming a general partner, §53-2-401.
- Binding the partnership, §53-2-402.
- Conduct, standards of, §53-2-408.
- Consent of, when necessary, §53-2-406.

Conversion and merger.

- Liability of general partner following conversion or merger, §53-2-1111.
- Power to bind organization following conversion or merger, §53-2-1112.

Dissociation, §53-2-603.

- Binding of partnership after dissociation but before dissolution, §53-2-606.
- Effect of dissociation, §53-2-605.
- Liability for obligations prior to and after dissociation, §53-2-607.

Wrongful dissociation, §53-2-604.**Dissolution.**

- Liability for obligations incurred after, §53-2-805.
- Power to bind partnership after, §53-2-804.

Distributions.

- Liability for consent to improper distributions, §53-2-509.

Dual capacity as limited partner, §53-2-113.**Execution of judgments against, §53-2-405.****Fiduciary duties, §53-2-408.****Liability of generally, §53-2-404.****Liability of partnership for actionable conduct of, §53-2-403.****Management rights, §53-2-406.****Reimbursement of, §53-2-406.****Right to information, §53-2-407.****Standards of conduct and duties owed to partnership, §53-2-408.****General provisions, §§53-2-101 to 53-2-118.**

LIMITED PARTNERSHIPS —Cont'd
Indebtedness.

Distributions, §53-2-508.

Information to be kept at designated office, §53-2-111.

Limited partners.

Demand for information,
§53-2-304.**Interest rates, §53-2-107.****Knowledge.**When person has notice and
knowledge, §53-2-103.**Law governing relationships and liability, §53-2-106.****Liability.**

Contributions.

Obligation to contribute, §53-2-502.

Conversion and merger.

Liability of general partner
following conversion or merger,
§53-2-1111.Limitations and restrictions on
conversion and merger,
§53-2-1110.

Dissociation.

Binding of partnership after
dissociation but before
dissolution, §53-2-606.Liability for obligations prior to
and after dissociation,
§53-2-607.

Wrongful dissociation, §53-2-604.

Dissolution.

Liability for obligations incurred
after, §53-2-805.

Distributions.

Improper distributions, §53-2-509.

General partners, §53-2-404.

Limited partners, §53-2-303.

Partnership, liability for actionable
conduct of general partner,
§53-2-403.**Limitation of actions.**Dissolution, claims not known at
time of, §53-2-807.

Improper distributions, §53-2-509.

Limited partners, §§53-2-301 to 53-2-306.Becoming a limited partner,
§53-2-301.

Demand for information, §53-2-304.

Dissociation, §53-2-601.

Dual capacity as general partner,
§53-2-113.

Duties, §53-2-305.

Liability generally, §53-2-303.

Person erroneously believing self as
limited partner, §53-2-306.**LIMITED PARTNERSHIPS —Cont'd****Limited partners —Cont'd**Power to bind partnership,
§53-2-302.**Loans.**Business transactions of partner with
partnership, §53-2-112.**Merger.**Conversion and merger, §§53-2-1100
to 53-2-1113.**Names, §53-2-108.**Foreign limited partnerships,
§53-2-905.

Reservation of name, §53-2-109.

Nature of entity, §53-2-104.**Notice.**

Dissolution.

Claims known at time of
dissolution, §53-2-806.Claims not known at time of
dissolution, §53-2-807.

Foreign limited partnerships.

Certificate of authority, revocation,
§53-2-906.When person has notice and
knowledge, §53-2-103.**Order for signature or unsigned filing of document, §53-2-205.****Partnership agreements.**Conversion and merger, limitations
and restrictions, §53-2-1110.Distributions in violation of,
prohibited, §53-2-508.

Effect and scope, §53-2-110.

Inconsistency with certificate of
limited partnership, §53-2-201.**Powers, §53-2-105.****Priority of disposition of assets at dissolution, §53-2-812.****Proxies of partners for consent purposes, §53-2-118.****Purpose of entity, §53-2-104.****Records.**

Correcting of filed records, §53-2-207.

Delivery to and filing by secretary of
state, §53-2-204.Filing of records by secretary of
state, §53-2-206.

General partners.

Right to information, §53-2-407.

Information to be kept at designated
office, §53-2-111.Liability for false information,
§53-2-208.

Limited partners.

Right to inspect and request
information, §53-2-304.

LIMITED PARTNERSHIPS —Cont'd**Records —Cont'd**

Signing of records, §§53-2-204,
53-2-205.

**Reinstatement following
administrative dissolution,
§53-2-810.**

Appeal of denial, §53-2-811.

Reports.

Annual report to secretary of state,
§53-2-210.

Service of process.

Administrative dissolution.

Appeal of denial of reinstatement,
§53-2-811.

Conversion and merger.

Foreign organization that is
converted.

Consent to jurisdiction,
§53-2-1105.

Foreign organization that is
survivor of merger.

Consent to jurisdiction,
§53-2-1109.

**Severability of provisions,
§53-2-1202.****Signatures.**

Records filed with secretary,
§§53-2-204, 53-2-205.

Statement of termination, §53-2-203.

Signatures, §§53-2-204, 53-2-205.

Statute of limitations.

Dissolution, claims not known at
time of, §53-2-807.

Improper distributions, §53-2-509.

**Supplemental principles of law and
equity, §53-2-107.****Title of provisions, §53-2-101.****Transferable interests.**

Creditor's rights, §53-2-703.

Effect of transfer, §53-2-702.

Estate of deceased partner, rights of,
§53-2-704.

Status as personal property,
§53-2-701.

Transfer of, §53-2-702.

Winding up, §53-2-803.

Statement of termination, §53-2-203.

Signatures, §§53-2-204, 53-2-205.

LLC.**Limited liability companies**

(repealed 7/1/2010), §§53-601 to
53-672.

LOANS.**Limited partnerships.**

Business transactions of partner with
partnership, §53-2-112.

LOCAL BUSINESS**IMPROVEMENT DISTRICTS.****Assessments.**

Segregation, §50-1721A.

Small parts of tracts.

Segregation of assessments,
§50-1721A.

LOCAL ECONOMIC**DEVELOPMENT, §§50-2901 to
50-2912.****Actions.**

Contest of legality of ordinance,
resolution or proceedings or
bonds.

Limitations, §50-2911.

Direct or collateral actions attacking
validity.

Limitations on review, §50-2911.

Bond issues.

Conditions of bond, §50-2909.

Contest of validity.

Limitations, §50-2911.

Issuance, §50-2909.

Not general obligation of agency or
municipality, §50-2910.

Validity.

Limitation of actions, §50-2911.

Citation of chapter, §50-2901.**Competitively disadvantaged
border community areas.**

Defined, §50-2903.

Revenue allocation areas.

Authority to create, §50-2904.

Contest of legality.

Limitation of actions, §50-2911.

Definitions, §50-2903.**Findings of legislature, §50-2902.****Funds.**

Special fund.

Creation, §50-2908.

Hearings.

Public hearings required, §50-2906.

Implementation of chapter.

Recommendation of urban renewal
agency, §50-2905.

Limitation of actions.

Contest of legality of ordinance,
resolution or proceedings or
bonds authorized, §50-2911.

Ordinance.

Contest of validity.

Limitations, §50-2911.

Required, §50-2906.

Transmittal of copy to taxing
agencies, §50-2907.

Purpose of chapter, §50-2902.**Revenue allocation area.**

Authority to create, §50-2904.

LOCAL ECONOMIC**DEVELOPMENT —Cont'd****Revenue allocation area —Cont'd**

Creation.

Authority, §50-2904.

Description.

Transmittal to taxing agencies,
§50-2907.**Severability of chapter, §50-2912.****Short title of chapter, §50-2901.****Taxation.**

Levies.

Determination, §50-2908.

Rate.

Determination, §50-2908.

Urban renewal agency.

Recommendations, §50-2905.

LOCAL IMPROVEMENT**DISTRICTS, §§50-1701 to
50-1772.****Actions.**

Assessments.

Delinquency certificates.

Redemption.

Suit to quiet title, §50-1750.

Advertising.

Bids.

Advertisement for construction
bids, §50-1710.**Appeals.**

Assessments, §50-1718.

Assessments.

Additional improvements, §50-1719.

Appeals, §50-1718.

Assessment roll.

Confirmation, §§50-1714, 50-1715.

Hearings on, §50-1714.

Notice, §§50-1712, 50-1713.

Preparation, §50-1712.

Bond issues.

Rights of bondholders against
assessments, §50-1726.

Delinquency certificates, §50-1739.

Assignment, §50-1741.

Form, §50-1742.

Not assignable during pendency
of action, §50-1754.

Fees of treasurer, §50-1749.

Redemption, §50-1743.

Deed, §50-1744.

Evidentiary effect, §50-1747.

Sale of property deeded to
municipality, §50-1751.

Suit to quiet title, §50-1750.

Expiration of time of redemption.

Notice, §§50-1745, 50-1746.

Notice of expiration of time of
redemption, §50-1745.

Proof of notice, §50-1746.

**LOCAL IMPROVEMENT
DISTRICTS —Cont'd****Assessments —Cont'd**

Delinquency certificates —Cont'd

Register, §50-1740.

Subsequent installments, §50-1748.

Delinquent installments, §50-1738.

Marking on installment docket,
§50-1739.

Installment docket, §50-1717.

Lien of assessment, §50-1721.

Foreclosure, §50-1721.

Limitation on assessments against
property, §50-1711.Marking of delinquent installments
on, §50-1739.

Notice, §50-1716.

Delinquency certificates.

Redemption.

Expiration of time of
redemption, §§50-1745,
50-1746.Hearing on assessment roll,
§§50-1712, 50-1713.

Payment, §50-1716.

Disposition of funds, §50-1753.

Railroads.

Improvements of street occupied by
tracks, §50-1704.

Reassessments, §50-1720.

Segregation, §50-1721A.

Small parts of tracts.

Segregation, §50-1721A.

Unpatented lands.

Assessment for improvements,
§50-1770.**Bids.**Procedure for construction bids,
§50-1710.**Bond issues.**

Assessments.

Rights of bondholders against
assessments, §50-1726.

Authorized, §50-1703.

Bond fund, §50-1724.

Form of bonds, §50-1722.

Generally, §50-1722.

Interest fund, §50-1724.

Liability of municipality, §50-1723.

Local improvement guarantee fund.

Payment out of fund, §§50-1763,
50-1767, 50-1768.Subrogation of municipality to
rights of payees, §50-1764.

Surplus, §50-1764.

Maturity, §50-1752.

Sale of property after maturity of
bonds, §50-1752.

LOCAL IMPROVEMENT DISTRICTS —Cont'd

Bond issues —Cont'd

- Reissue of bonds, §50-1725.
- Reserve fund, §50-1771.
- Terms of bonds, §50-1722.
- Warrants in lieu of bonds, §50-1722.

Bonds, surety.

- Assessments.
- Appeals, §50-1718.

Boundaries.

- Resolution of intention to create district.
- Description of boundaries, §50-1707.

Business buildings.

- Local business improvement districts, §50-1703A.

Citation of code, §50-1701.

Commercially reasonable credit assurances, §50-1772.

Consolidated local improvement districts.

- Authorized, §50-1728.

Contracts.

- Bids.
- Procedure for construction bids, §50-1710.

Creation of district, §§50-1705 to 50-1710.

- Hearing, §50-1709.
- Initiation of organization of district, §50-1706.
- Modified district, §50-1705.
- Notice.
- Intention to create district, §50-1707.
- Publication of notice, §50-1708.

- Ordinance, §50-1710.
- Petition, §50-1706.

- Fees, §50-1706A.
- Protests, §50-1709.
- Resolution of intention to create district, §50-1707.
- Publication, §50-1708.

Credit assurances.

- Commercially reasonable credit assurances, §50-1772.

Definitions, §50-1702.

Fees.

- Assessments.
- Delinquency certificates.
- Fees of treasurer, §50-1749.

Funds.

- Bond and interest funds, §50-1724.
- Local improvement guarantee fund, §§50-1762 to 50-1769.

LOCAL IMPROVEMENT DISTRICTS —Cont'd

Hearings.

- Assessments.
- Hearing on assessment roll, §50-1714.
- Notice, §§50-1712, 50-1713.
- Creation of district, §50-1709.

Irrigation.

- Powers of governing bodies of municipalities as to, §50-1703.

Liability.

- Bond issues.
- Liability of municipality, §50-1723.

Liens.

- Assessments, §50-1721.
- Foreclosure, §50-1721.

Local business improvement districts, §50-1703A.

Local improvement guarantee fund, §§50-1762 to 50-1769.

- Bond issues.
- Payment out of fund, §§50-1763, 50-1767, 50-1768.
- Subrogation of municipality to rights of payees, §50-1764.
- Surplus, §50-1764.
- Reserve fund authorized, §50-1771.
- Creation, §50-1762.
- Excess in fund.
- Disposition, §50-1769.
- Rules and regulations.
- Maintenance and operation of fund, §50-1765.
- Sources, §50-1765.
- Replenishment of fund, §50-1766.
- Taxation.
- Creation of fund.
- Levy of tax, §50-1762.
- Replenishment of fund, §50-1766.
- Warrants.
- Issuance against fund, §50-1766.

Notice.

- Assessments, §50-1716.
- Delinquency certificates.
- Redemption.
- Expiration of time of redemption, §§50-1745, 50-1746.
- Hearing on assessment roll, §§50-1712, 50-1713.
- Bids.
- Advertisement for bids, §50-1710.
- Creation of district.
- Intention to create district, §50-1707.
- Publication of notice, §50-1708.

LOCAL IMPROVEMENT DISTRICTS —Cont'd

Officers of municipalities.

Duties, §50-1755.

Ordinances.

Creation of district, §50-1710.

Parking.

Off-street parking.

Defined, §50-1702.

Powers of governing bodies of municipalities as to, §50-1703.

Petitions.

Creation of district, §50-1706.

Fees, §50-1706A.

Powers conferred on governing bodies of municipalities, §50-1703.

Publication.

Notice of intention to create district, §50-1708.

Proceedings generally, §50-1727.

Railroads.

Assessments.

Improvements to streets occupied by tracks, §50-1704.

Rules and regulations.

Local improvement guarantee fund.

Maintenance and operation of fund, §50-1765.

Sidewalks.

Powers of governing bodies of municipalities as to, §50-1703.

Streets.

Defined, §50-1702.

Improvements on one side of street, §50-1704.

Powers of governing bodies of municipalities as to, §50-1703.

Railroads.

Improvements on street occupied by tracks, §50-1704.

Taxation.

Local improvement guarantee fund.

Creation of fund.

Levy of tax, §50-1762.

Replenishment of fund, §50-1766.

Title of code.

Short title, §50-1701.

LOCAL IMPROVEMENT GUARANTEE FUND, §§50-1762 to 50-1769.

LOCAL LAND USE PLANNING.

Comprehensive maps.

Computerized mapping system, §50-345.

LOW INCOME HOUSING.

Housing authorities.

General provisions, §§50-1901 to 50-1927.

M

MANDAMUS.

Housing authorities.

Remedies of obligee of authority, §50-1920.

MAPS AND PLATS.

Computerized mapping system.

Municipal corporations.

Fees, §50-345.

Municipal corporations.

Computerized mapping system.

Fees, §50-345.

Subdivisions, §§50-1301 to 50-1334.

Subdivisions.

Municipal corporations, §§50-1301 to 50-1334.

MAYORS.

Municipal corporations, §§50-601 to 50-612.

MENTALLY ILL.

Limited liability companies (repealed 7/1/2010).

Powers of estate of incompetent member, §53-639.

MERGER OF LIMITED LIABILITY COMPANIES.

Limited liability companies

(repealed 7/1/2010), §§53-661 to 53-664.

MERGER OF LIMITED PARTNERSHIPS.

Conversion and merger, §§53-2-1100 to 53-2-1113.

MILITARY AFFAIRS.

Absentee ballots.

United States service personnel.

Application, §50-443.

MINES AND MINING.

Municipal corporations.

Leases.

Lease of mining property city, §50-234.

Partnerships.

Mining partnerships, §§53-401 to 53-412.

MINING PARTNERSHIPS, §§53-401 to 53-412.

MISDEMEANORS.**Municipal corporations.**

City attorney.

Prosecution of state misdemeanors committed within municipal limits, §50-208A.

Finance.

Publication of financial statements.

Failure by city treasurer to comply with requirements, §50-1011.

Industrial development program.

Conflicts of interest, §50-2705.

Subdivisions.

Sanitary districts.

Violations of provisions, §50-1329.

Water systems encompassed by plats.

Certification.

Failure to comply, §50-1334.

Notaries public, §51-119.**Policemen's retirement fund.**

False claims against fund, §50-1526.

MONUMENTS.**Municipal corporations.**

Subdivisions.

Interior monuments.

Marking after recording of plat, §50-1332.

Setting, §50-1331.

Recording of plats with only exterior monuments referenced, §50-1333.

MOTOR VEHICLES.**Municipal corporations.**

Parking.

Bond issues.

Revenue bonds, §§50-1027 to 50-1042.

Parking meters.

Disposition of parking fees, §50-1015A.

MUNICIPAL CORPORATIONS.**Accounts and accounting.**

City treasurer, §50-208.

Council.

Examination of accounts of fiscal officers, §50-708.

Irrigation systems.

Adjustment and settlement of accounts with irrigation system in operation, §50-1831.

Mayor.

Power to require accounts from officers, §50-605.

MUNICIPAL CORPORATIONS

—Cont'd

Actions.

City attorney.

Representation of city in all suits or proceeding in which city interested, §50-208A.

Damage claims against cities, §50-219.

Power to sue and be sued, §50-301.

Urban renewal.

Contest of legality of ordinance, resolution or proceedings or bonds.

Limitations, §50-2027.

Aeronautics.

Acquisition, operation and maintenance of aviation facilities, §50-321.

Bond issues.

Revenue bonds.

General provisions, §§50-1027 to 50-1042.

Affidavits.

Disincorporation, §50-2214.

Agriculture.

Separation of agricultural lands, §§50-226 to 50-233.

Airports.

Acquisition, operation and maintenance of aviation facilities, §50-321.

Alcoholic beverages.

Tax on liquor by the drink, wine and beer sold at retail.

Property tax alternatives for resort cities, §50-1046.

Alleys.

Creation.

Powers of cities, §50-311.

Snow, ice, rubbish and weeds.

Removal, §50-317.

Amusements.

Power to license and regulate, §50-308.

Animals.

Running at large.

Powers as to animals running at large, §50-319.

Annexation, §§50-222 to 50-224.

Airports or landing fields.

Annexation of noncontiguous territories, §50-222.

Authorized, §50-222.

Cemetery districts.

Exceptions to provisions, §50-224.

Consent, §50-222.

Effect, §50-224.

MUNICIPAL CORPORATIONS

—Cont'd

Annexation —Cont'd

Generally, §50-222.

Noncontiguous territories.

Territory occupied by municipally owned or operated airports or landing fields, §50-222.

Ordinances.

Filing of annexation ordinance, §50-223.

Effect, §50-224.

Procedure, §50-222.

Taxation.

Effect of annexation, §50-224.

Appeals.

Civil service.

Removals and suspensions, §50-1609.

Elections.

City clerk.

Persons aggrieved by, §50-406.

Separation of agricultural lands, §50-233.

Subdivisions.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation, §50-1322.

Appropriations.

Elections.

Special appropriation upon election, §50-1003.

Expenditures not to exceed appropriation, §50-1006.

Exceptions, §50-1006.

Ordinances.

Amending appropriation ordinance, §50-1003.

Annual appropriation ordinance, §50-1003.

Special appropriation upon petition or election, §50-1003.

Urban renewal.

Powers of municipalities as to urban renewal projects, §50-2015.

Arrest.

Elections.

Privilege of electors from arrest, §50-411.

Vagrants.

Power to arrest, §50-308.

Auctions.

Real property.

Conveyance.

Sale to be at public auction, §50-1403.

MUNICIPAL CORPORATIONS

—Cont'd

Audits.

City finances, §50-1010.

Filing of audit, §50-1010.

Industrial development program.

Public corporations.

Audit by state, §50-2707.

Authorities.

Housing authorities, §§50-1901 to 50-1927.

Bids.

Business improvement districts, §§50-2620, 50-2621.

Boards and commissions, §50-210.

Power of mayor and council to appoint, §50-210.

Bonds, surety.

City manager plan.

City manager, §50-811.

Officers.

Appointive officers, §50-204.

Borrowing money.

Power to borrow money, §50-237.

Boundaries.

Annexation.

General provisions, §§50-222 to 50-224.

Exclusion of territory, §50-225.

Irrigation systems.

Ordinances or resolutions establishing boundaries, §50-1832.

Navigable lakes and streams.

Cities situated on.

Extension of boundaries into waters, §50-221.

Separation of agricultural lands, §§50-226 to 50-233.

Breach of the peace.

Powers as to maintenance of peace, §50-308.

Bridges.

Supervision generally, §50-313.

Budgets.

Annual budget, §50-1002.

Notice of hearing on, §50-1002.

Buildings.

Destruction of buildings inimical to safety and health.

Powers of cities, §50-335.

Power to erect buildings, §50-301.

Urban renewal, §§50-2001 to 50-2032.

Business improvement districts,

§§50-2601 to 50-2624.

Assessments.

Authorized, §50-2601.

MUNICIPAL CORPORATIONS

—Cont'd

Business improvement districts

—Cont'd

Assessments —Cont'd

Benefit zones.

Rates, §50-2615.

Changes in rates, §50-2614.

Classification of businesses for,
§50-2608.Same basis or rate for classes
not required, §50-2609.

Collection, §50-2613.

New businesses.

Exemption period, §50-2617.

Use of revenue, §50-2611.

Restrictions, §50-2612.

Authorized, §50-2601.

Benefit zones.

Assessments.

Rates, §50-2615.

Authorized, §50-2615.

Disestablishment, §50-2616.

Establishment, §50-2616.

Modification, §50-2616.

Bids, §50-2620.

Computing cost of improvement for
bid requirement, §50-2621.

Boundaries.

Change, §50-2607.

Contracts.

Administration of operation of
district, §50-2611.

Bids, §§50-2620, 50-2621.

Definitions, §50-2602.

Disestablishment of district,
§50-2618.

Effect, §50-2619.

Hearing, §50-2618.

Resolution of intention, §50-2618.

Establishment of district.

Hearing, §§50-2604, 50-2606.

Notice, §50-2605.

Ordinance, §50-2610.

Petition, §50-2603.

Resolution of intention to establish,
§50-2604.

Lease of property.

Disclosure requirements, §50-2623.

Notification, §50-2624.

New businesses.

Exemption from assessments.

Period of exemption, §50-2617.

Notice.

Establishment of district.

Hearing, §50-2605.

Ordinances.

Changes in assessment rates,
§50-2614.**MUNICIPAL CORPORATIONS**

—Cont'd

Business improvement districts

—Cont'd

Ordinances —Cont'd

Disestablishment of district,
§50-2618.

Establishment of district, §50-2610.

Petitions.

Establishment of district, §50-2603.

Purposes, §50-2601.

Sale of property.

Disclosure requirements, §50-2623.

Notification, §50-2624.

Supplemental nature of provisions,
§50-2622.**Carnivals.**Power to license and regulate,
§50-308.**Carriers.**Power to regulate public carriers,
§50-306.**Cemeteries.**

Acquisition.

Powers of cities, §50-320.

Annexation.

Effect of annexation.

Exemption of cemetery districts,
§50-224.

Powers of cities as to, §50-320.

Taxation.

Tax levy for acquisition of
cemeteries, §50-320.

Vacation of cemeteries.

Plats or parts of plats of
subdivisions, §50-1306A.**Census, §50-214.**

Incorporation, §50-103.

Circuses.Power to license and regulate,
§50-308.**City attorney.**

Appointment, §50-204.

Criminal procedure.

Prosecution of violations of
ordinances, state traffic
infractions and state
misdemeanors.Committed within municipal
limits, §50-208A.

Duties, §50-208A.

Legal advisor of municipal
corporations, §50-208A.**City code.**

Arrangement of ordinances, §50-904.

Authorized, §50-903.

Publication in book or pamphlet
form, §50-906.

MUNICIPAL CORPORATIONS

—Cont'd

City code —Cont'd

Revision, §50-903.

Repeal of conflicting provisions,
§50-905.

City irrigation systems.

General provisions, §§50-1801 to
50-1835.

City manager plan.

Adoption of plan.

Election of officials following
adoption, §50-806.

Bonds, surety.

City manager, §50-811.

City manager.

Appointment, §50-811.

Bonds, surety, §50-811.

Duties, §50-811.

Council.

Appointment of city manager,
§50-808.

Election of officials following
adoption of plan, §50-806.

Number of councilmen, §50-805.

Powers, §50-808.

Elections.

Adoption of plan.

Election of officials following
adoption, §50-806.

Mayor.

Direct election, §50-809.

Mayor.

Direct election, §50-809.

Powers, §50-810.

Selection by council, §50-809.

Term of office, §50-809.

City property tax alternatives act of 1978, §§50-1043 to 50-1049.

City treasurer.

Accounts and accounting, §50-208.

Appointive officers generally,
§§50-204 to 50-206.

Appointment, §50-204.

Bonds, surety, §50-204.

Duties, §50-208.

Financial statements.

Publication.

Duties, §50-1011.

Vacancy in office.

Failure to render accounts,
§50-208.

Civil service, §§50-1601 to 50-1610.

Appeals.

Removals or suspensions,
§50-1609.

Appointment to positions, §50-1605.

Temporary appointments,
§50-1608.

MUNICIPAL CORPORATIONS

—Cont'd

Civil service —Cont'd

Classified civil service lists, §50-1602.

Commission.

Appointment, §50-1601.

Number of members, §50-1601.

Rules and regulations, §50-1603.

Terms of members, §50-1601.

Vacancies, §50-1601.

Creation of system, §50-1601.

Departments governed by civil
service, §50-1602.

Discharge.

Causes, §50-1604.

Examinations, §50-1604.

Reexamination, §50-1605.

Notice.

Abolition of system.

Proposed ordinance, §50-1601.

Ordinances.

Abolition of system.

Notice of proposed ordinance,
§50-1601.

Departments to be governed by
civil service.

Determination by ordinance,
§50-1602.

Promotion for merit, §50-1606.

Reduction of force.

Removals due to, §50-1610.

Removals.

Appeals, §50-1609.

Causes, §50-1604.

Reduction of force, §50-1610.

Rules and regulations.

Commission, §50-1603.

Saving clause.

Employees of six months when
ordinance becomes effective,
§50-1607.

Suspensions.

Appeals, §50-1609.

Causes, §50-1604.

Temporary appointments, §50-1608.

Claims against cities.

Damage claims.

Filing, §50-219.

Invalid claims.

Prohibition against recognition,
§50-218.

Judgments.

Payment, §50-217.

Payment, §50-1018.

Presentation, §50-1017.

Stale claims.

Prohibition against recognition,
§50-218.

MUNICIPAL CORPORATIONS

—Cont'd

Community colleges.

- Cooperation with boards of trustees of community college districts.
- Streets within highway district, §50-1330.

Community infrastructure district act, §§50-3101 to 50-3121.**Computerized mapping system, §50-345.****Conflicts of interest.**

- Industrial development program, §50-2705.
- Urban renewal, §50-2017.

Consolidation of cities.

- Authorized, §50-2101.

Bond issues.

- Effect of consolidation on prior obligations or proceedings, §50-2111.
- No property to be taxed for prior indebtedness, §50-2110.
- Payment of indebtedness, §50-2109.

Debt.

- No property to be taxed for prior indebtedness, §50-2110.
- Payment of indebtedness, §50-2109.

Effect, §50-2111.**Effective date, §50-2108.****Elections, §50-2105.****Expenses of election.**

- Responsibility for payment, §50-2114.

Officers of consolidated corporation, §50-2107.**Resolution specifying time of election, §50-2104.****Results.**

- Certification to secretary of state, §50-2106.
- Effective date of consolidation, §50-2108.

Time for, §50-2104.**Expenses.**

- Responsibility for payment, §50-2114.

Joint session of governing bodies, §50-2104.**Resolution for, §50-2102.****Officers.**

- Election of officers of consolidated corporation, §50-2107.

Ordinances.

- Effect of ordinances of consolidated cities, §50-2112.

MUNICIPAL CORPORATIONS

—Cont'd

Consolidation of cities —Cont'd

- Petitions, §50-2103.
- Records.
 - Books of smaller city property of new city, §50-2113.
- Succession.
 - New corporate successor to former corporations, §50-2109.
- Taxation.
 - Effect of consolidation, §50-2109.
 - Prior indebtedness.
 - No property to be taxed for, §50-2110.

Contracts.

- Business improvement districts.
 - Administration of operation of district, §50-2611.
 - Bids, §50-2620, 50-2621.
- Electricity.
 - Power plants.
 - Sale of excess power, §50-327.
- Irrigation systems.
 - Allocation and accounting for contract indebtedness, §50-1805A.
 - Distribution of water, §50-1805.
 - Powers of cities, §50-1834.

Mayor.

- Signing contracts, §50-607.

Power of cities to contract, §50-301.**Conveyances, §§50-1401 to 50-1409.****Council-manager plan.****Adoption of plan.**

- Authorized, §50-801.
- Effective date, §50-807.
- Discontinuance of plan, §50-812.
- Effective date following adoption of plan, §50-807.
- Elections.
 - Adoption of plan.
 - Petition, §50-802.
 - Proposition to be voted, §50-804.
 - Resolution by council, §50-802.
 - Time for holding special election, §50-803.
 - Discontinuance of plan, §50-812.

Discontinuance of plan, §50-812.**Petitions.**

- Elections.
 - Adoption of plan, §50-802.
- Required signatures.
 - Calculation for number of, §50-813.

Councils.

- Accounts and accounting.
 - Examination of accounts of fiscal officers, §50-708.

MUNICIPAL CORPORATIONS

—Cont'd

Councils —Cont'd

Assignment of council seats, §50-707.

Budgets.

Annual budget, §50-1002.

City manager plan.

Appointment of city manager,
§50-808.Election of officials following
adoption of plan, §50-806.

Number of councilmen, §50-805.

Powers, §50-808.

Compensation of councilmen,
§50-203.

Composition, §50-701.

Districts.

Election of councilmen by districts,
§50-707A.

Elections.

Candidates to file for one of
assigned council seats,
§50-707.Change in number of councilmen,
§50-703.

City manager plan.

Election of officials following
adoption, §50-806.

Duties as to elections, §50-211.

Election of councilmen by districts,
§50-707A.Half of councilmen elected at each
general election, §50-701.Majority may be required for
election, §50-707B.

Polling places.

Conformity with state standards,
§50-408.

Designation by council, §50-408.

Precincts.

Establishment of election
precincts by council,
§50-407.

Runoff election, §50-707B.

Journal of proceedings.

City clerk to keep, §50-207.

Mayor.

Messages to council, §50-603.

Presiding officer at meetings,
§50-602.

Special meetings of council.

Power to call, §50-604.

Veto power of mayor, §50-611.

Meetings, §50-705.

Mayor as presiding officer, §50-602.

Special meetings, §50-706.

Number of councilmen, §50-203.

Change, §50-703.

MUNICIPAL CORPORATIONS

—Cont'd

Councils —Cont'd

Number of councilmen —Cont'd

City manager plan, §50-805.

Ordinances.

Passage, §50-902.

Powers, §50-701.

Qualifications of councilmen,
§50-702.

Quorum, §50-705.

Reorganization of cities organized
under general laws.Governing body to continue in
office, §50-2304.

Special meetings, §50-604.

Terms of office, §50-702.

Change in number of councilmen,
§50-703.

Vacancies in office.

Appointment, §50-704.

Witnesses.

Compelling attendance, §50-216.

Criminal procedure.

City attorney.

Prosecution of violations of
ordinances, infractions and
misdemeanors committed
within municipal limits,
§50-208A.**Cultural facilities.**

Powers as to, §50-303.

Damages.

Claims against cities.

Filing of damage claims, §50-219.

Death.

Elections.

Death of elector.

Removal of name from election
register, §50-427.**Deeds.**

Subdivisions.

Acknowledging and recording plat
equivalent to deed in fee
simple, §50-1312.**Deferred compensation plans.**

Investments of deposits.

Governed by prudent investor act,
§50-1013A.**Definitions.**

Bond issues.

Revenue bonds, §50-1029.

Business improvement districts,
§50-2602.

Domestic water systems, §50-323.

Elections, §50-402.

Housing authorities, §50-1903.

MUNICIPAL CORPORATIONS

—Cont'd

Definitions —Cont'd

- Industrial development program,
§50-2702.
- Local improvement districts,
§50-1702.
- Policemen's retirement fund,
§50-1502.
- Records, §50-907.
- Subdivisions, §50-1301.
- Urban renewal, §50-2018.

Deposits, §50-1013.**Disincorporation.**

- Affidavit.
- Filing, §50-2214.
- Bond issues.
- Determination of indebtedness,
§50-2206.
- Payment of indebtedness,
§50-2208.
- Costs of proceedings.
- Payment, §50-2213.
- County commissioners.
- Power to close city affairs,
§50-2212.

Debt.

- Determination of indebtedness,
§50-2206.
- Payment of indebtedness,
§50-2208.

Elections.

- Affirmative vote.
- Proceedings upon, §50-2205.
- Canvass of vote, §50-2203.
- Determining issue by election,
§50-2202.
- Negative vote.
- Effect, §50-2204.

Funds.

- Disposition of surplus funds,
§50-2211.

Order of disincorporation, §50-2205.**Petitions, §50-2201.****Records.**

- Disposition, §50-2207.

Taxation.

- Current tax levies.
- Collection and disposition,
§50-2209.
- Subsequent tax levies.
- Authorized, §50-2210.

Districts.

- Business improvement districts,
§§50-2601 to 50-2624.
- Community infrastructure districts,
§§50-3101 to 50-3121.

MUNICIPAL CORPORATIONS

—Cont'd

Districts —Cont'd

- Local improvement districts,
§§50-1701 to 50-1772.

Divisions.

- Vacation.
- Recordation, §50-1324.

Drainage.

- Powers as to, §50-333.

Drainage system.

- Defined, §50-1029.

Easements.

- Vacation of subdivision easements,
§50-1325.
- Public utility easements,
§50-1306A.

Elections.

- Absentee ballots.
- Absentee voting precinct, §50-407.
- Affidavit of elector, §50-446.
- Application for, §50-443.
- Record of applications, §50-451.
- Assistance in marking, §50-445.
- Authorized, §50-442.
- Deposit of absentee ballots,
§50-450.
- Entry of elector's name on poll
book, §50-450.
- Issuance, §50-445.
- Marking and folding.
- Assistance, §50-445.
- Record of applications for, §50-451.
- Return of ballot, §50-447.
- Signature comparison, §50-447.
- Transmission of absentee ballots to
polls, §50-449.
- United States service personnel,
§50-443.
- Voting by.
- Authorized, §50-442.
- Voting place.
- City clerk to provide, §50-448.
- Absent elector's polling place.
- City clerks to provide, §50-448.
- Appeals.
- City clerk.
- Persons aggrieved by, §50-406.
- Appropriations.
- Special appropriation upon
election, §50-1003.
- Arrest.
- Electors privileged from arrest,
§50-411.
- Ballot boxes.
- Duplicate ballot boxes.
- Counting of votes.
- When counting begins,
§50-463.

MUNICIPAL CORPORATIONS

—Cont'd

Elections —Cont'd

Ballot boxes —Cont'd

Opening, §50-455.

Ballots.

City clerk to provide, §50-438.

Comparison of poll lists and
ballots, §50-464.

Contents, §50-439.

Correction after printing, §50-441.

Counting of ballots, §§50-463,
50-465.

Duplicate ballot boxes.

When counting begins,
§50-463.

Recount.

Application, §50-471.

When counting begins, §50-463.

Delivery to elector, §50-458.

Marking.

Manner of voting, §50-459.

Preparation, §50-439.

Sample ballots, §50-440.

Spoiled ballots, §50-461.

Stamps.

Official election stamp, §50-437.

Void ballots, §50-464.

Withdrawal of candidate.

Correction of ballot after
printing, §50-441.

Bond issues.

City coupon bonds, §50-1026.

Notice, §§50-1026, 50-1026A.

Joint services.

Bond election in each city,
§50-1024.

Revenue bonds, §50-1035.

Notice, §50-1035.

Validation of bonds authorized at
previous elections, §50-1021.Campaign expenditures reporting
law.Applicability to certain city
elections, §50-477.

Canvass of votes, §50-467.

Certificates of election, §50-470.

Challengers, §50-410.

Citation of law.

Short title, §50-401.

City clerk.

Appeals from clerk, §50-406.

Ballots and election supplies.

Clerk to provide, §50-438.

Duties.

Election day, §50-452.

Supervision of administration of
election laws, §50-403.**MUNICIPAL CORPORATIONS**

—Cont'd

Elections —Cont'd

City clerk —Cont'd

Office.

Office to be open as long as polls
open, §50-405.

Powers as to elections, §50-404.

Transmission of supplies to city
clerk after votes counted,
§50-466.

City manager plan.

Adoption of plan.

Election of officials following
adoption, §50-806.

Mayor.

Direct election, §50-809.

Consolidation of cities, §50-2105.

Officers of consolidated corporation,
§50-2107.Resolution specifying time of
election, §50-2104.

Results.

Certification to secretary of
state, §50-2106.Effective date of consolidation,
§50-2108.

Time for, §50-2104.

Council.

Candidates to file for one of
assigned council seats,
§50-707.Change in number of councilmen,
§50-703.

City manager plan.

Election of officials following
adoption, §50-806.

Duties as to elections, §50-211.

Election of councilmen by districts,
§50-707A.Half of councilmen elected at each
general election, §50-701.Majority may be required for
election, §50-707B.

Polling places.

Conformity with state standards,
§50-408.

Designation by council, §50-408.

Precincts.

Establishment of election
precincts by council,
§50-407.

Runoff election, §50-707B.

Council-manager plan.

Adoption of plan.

Petition, §50-802.

Proposition to be voted, §50-804.

Resolution by council, §50-802.

MUNICIPAL CORPORATIONS

—Cont'd

Elections —Cont'd

Council-manager plan —Cont'd

Adoption of plan —Cont'd

Time for holding special election,
§50-803.

Discontinuance of plan, §50-812.

County clerk.

Supervision of administration of
election laws, §50-403.

Death of elector.

Removal of name from election
register, §50-427.

Definitions, §50-402.

Disincorporation.

Affirmative vote.

Proceedings upon, §50-2205.

Canvass of vote, §50-2203.

Determining issue by election,
§50-2202.

Negative vote.

Effect, §50-2204.

Disqualified electors not permitted to
vote, §50-412.

General elections, §50-429.

Defined, §50-402.

Handicapped persons.

Alternative voting procedure,
§50-460.

Assistance to voter, §50-460.

Initiative, §§50-473, 50-501.

Judges.

Duties, §50-457.

Powers, §50-457.

Manner of voting, §50-459.

Mayor.

City manager plan, §50-809.

Majority required for election,
§50-612.

Runoff elections, §50-612.

Nominations.

Declaration, §50-430.

Filing, §50-432.

Form, §50-431.

Notice of candidate filing deadline,
§50-435.

Notice, §50-436.

Candidate filing deadline, §50-435.

Changing polling places, §50-454.

Officers of election.

Appointment, §50-409.

Water, light, power and gas plants.
Sale or lease.

Election on question, §50-326.

Oaths.

City clerk.

Power to administer oath,
§50-404.**MUNICIPAL CORPORATIONS**

—Cont'd

Elections —Cont'd

Oaths —Cont'd

Officers of elections.

City clerk to administer oath,
§§50-207, 50-452.Election judge may administer
oaths, §50-456.

Officers of election.

Appointment, §§50-211, 50-409.

Compensation, §50-409.

Definition of "election
official," §50-402.

Divulging information.

Prohibited, §50-462.

Failure to report for duty on day of
election.

Vacancies.

Filling, §50-409.

Judges.

Duties, §50-457.

Powers, §50-457.

Notice.

Appointment, §50-409.

Oaths.

Administration by city clerk,
§§50-207, 50-452.Election judge may administer
oaths, §50-456.

Prohibited acts by, §50-462.

Vacancies.

Failure to report for duty on day
of election.

Filling, §50-409.

Petitions.

Initiative.

Ordinance providing for,
§50-501.

Nominations, §50-430.

Filing petitions, §50-432.

Form of petition, §50-431.

Referendum.

Ordinance providing for,
§50-501.

Policemen's retirement fund.

Board of commissioners.

Election of members, §50-1504.

Polling places.

Absentee elector's polling place.

City clerks to provide, §50-448.

Challengers, §50-410.

Changing polling place.

Proclamation and notice,
§50-454.

Closing of polls, §50-453.

Conformity with state standards,
§50-408.

MUNICIPAL CORPORATIONS

—Cont'd

Elections —Cont'd

Polling places —Cont'd

Designation, §50-408.

Opening of polls, §50-453.

Watchers, §50-410.

Precincts.

Absentee voting precinct, §50-407.

Division of city into precincts.

Duty of city council, §50-211.

Establishment of election precincts,
§50-407.

Publication.

Notice of candidate filing
deadlines, §50-435.

Notice of election, §50-436.

Sample ballot, §50-440.

Public utilities.

Lease or sale of water, light, power
and gas plants.

Election on question, §50-326.

Qualifications of electors.

Definition of "qualified
elector," §50-402.Disqualified electors not permitted
to vote, §50-412.

Recall elections.

Applicable law, §50-472.

Records.

Absentee ballots.

Applications for, §50-451.

Recount.

Application for, §50-471.

Referendum, §§50-473, 50-501.

Registration of electors, §50-414.

Challenges to entries in election
record and poll book, §50-427.

Death.

Removal of name from election
register, §50-427.Election record and poll book,
§§50-428, 50-452.

Challenges to entries in, §50-427.

Comparison of poll lists and
ballots, §50-464.Signing by election board judges,
§50-452.

Signing by electors, §50-458.

Transmission to city clerk after
counting of votes, §50-466.Reorganization of cities organized
under general laws.

Officers, §50-2308.

Submission of proposition to
electorate, §§50-2302, 50-2303.**MUNICIPAL CORPORATIONS**

—Cont'd

Elections —Cont'd

Reports.

Campaign expenditures.

Applicability of provisions to
certain city elections,
§50-477.

Residence.

Absence from city.

Gain or loss of residence by
reason of, §50-415.

Defined, §50-402.

Results of election.

Determining, §50-467.

Tie votes, §50-468.

Special elections, §50-429.

Defined, §50-402.

Stamps.

Official election stamp, §50-437.

Tally books.

Defined, §50-402.

Transmission to city clerk, §50-466.

Taxation.

Property tax alternatives for resort
cities.Nonproperty taxes, §§50-1044,
50-1046.

Tie votes, §50-468.

Time.

Computation of time, §50-402.

Title of law.

Short title, §50-401.

Vacancies in office.

Failure of person elected to qualify
creates vacancy, §50-469.

Violations of election laws, §50-475.

Voters.

Assistance to voter, §50-460.

Absentee ballots, §50-445.

Challenge of voters.

Election judge may challenge,
§50-456.

Handicapped voters.

Assistance to voter, §50-460.

Manner of voting, §50-459.

Voting machines.

Applicable law, §50-474.

Authorized, §50-474.

Watchers, §50-410.

Water, light, power and gas plants.

Lease or sale.

Election on question, §50-326.

Electrical power.Generation and transmission
projects, participation in to
secure cost-based rates,
§50-342A.

MUNICIPAL CORPORATIONS

—Cont'd

Electrical power —Cont'd

Power plants.

Bond issues.

City coupon bonds.

Issuance to acquire light and power plants, §50-1020.

Joint services, §§50-1022 to 50-1025.

Contracts.

Sale of excess power, §50-327.

Excess power.

Sale, §§50-325, 50-327.

Lease or sale of plants.

Procedure, §50-326.

Powers as to, §50-325.

Purchase or disposal of electric power, §50-342.

Rates, determination of fairness, §50-325.

Emergencies.

Ordinances.

Immediate operation in emergencies, §50-901.

Eminent domain.

Irrigation systems.

Powers as to, §50-1801.

Streets, §50-311.

Urban renewal.

Powers of urban renewal agencies, §§50-2007, 50-2010.

Employees.

Civil service, §§50-1601 to 50-1610.

Deferred compensation plans.

Investments of deposits.

Governed by prudent investor act, §50-1013A.

Insurance.

Deductions from wages for insurance premiums, §50-1016.

Retirement and pension plans.

Authorized, §50-1016.

Deductions from wages for, §50-1016.

Wages.

Deductions from wages, §50-1016.

Deferred compensation plans.

Investments of deposits governed by prudent investor act, §50-1013A.

Evidence.

Records.

Copies.

Admissibility, §50-909.

Exclusion of territory, §50-225.**MUNICIPAL CORPORATIONS**

—Cont'd

Executions.

Urban renewal.

Property of urban renewal agency.

Exemption from levy and sale by execution, §50-2014.

Explosives.

Powers as to hazardous materials, §50-310.

Federally mandated program.

Penalties or enforcement remedies required by terms of program.

Enforcement by ordinance, §50-302.

Fees.

Subdivisions.

Plats.

Verification, §50-1305.

Fiduciaries.

Investments of deposits of deferred compensation plans.

Prudent investor act, §50-1013A.

Finance.

Accumulation of fund balances, §50-1005A.

Budgets.

Annual budget, §50-1002.

Notice of hearing on, §50-1002.

City treasurer.

Publication of financial statements.

Duties, §50-1011.

Claims against cities.

Payment, §50-1018.

Presentation, §50-1017.

Deposits, §50-1013.

Fiscal year, §50-1001.

Fund balances.

Accumulation, §50-1005A.

Investments.

Authorized investments, §50-1013.

Misdemeanors.

Publication of financial statements.

Failure by city treasurer to comply with requirements, §50-1011.

Statements.

Publication, §50-1011.

Transfer of funds, §50-1014.

Fire protection.

Buildings.

Fire hazards.

Destruction of buildings inimical to safety.

Powers of cities, §50-335.

Fire zones.

Powers of cities as to, §50-309.

MUNICIPAL CORPORATIONS

—Cont'd

Fireworks.

Power to prevent discharge of fireworks, §50-310.

Fiscal year, §50-1001.**Floods.**

Powers as to flood prevention, §50-333.

Franchises.

Granting of franchises, §50-329.

Ordinances, §50-329.

Public service providers, §50-329A.

Rates of franchise holders.

Power to regulate, §50-330.

Term of franchises, §50-329.

Funds.

Deposit, §50-1013.

Disincorporation.

Disposition of surplus funds, §50-2211.

Investment.

Authorized investments, §50-1013.

Irrigation systems.

Irrigation fund, §50-1806.

Policemen's retirement fund, §§50-1501 to 50-1526.

Transfer of funds, §50-1014.

Garbage and trash.

Solid waste disposal systems.

Maintenance and operation by cities, §50-344.

General laws.

Reorganization of cities, §§50-2301 to 50-2308.

Handicapped persons.

Elections.

Alternative voting procedure, §50-460.

Assistance to voter, §50-460.

Hazardous materials.

Powers as to, §50-310.

Health.

Boards of health, §50-304.

Powers as to public health, §50-304.

Health facilities.

Clinics or other health care facilities.

Powers to acquire and maintain, §50-305.

Hospitals.

Conveyance or lease of city hospitals, §50-305.

Powers to acquire and maintain, §50-305.

Hotels, inns and other transient lodging places.

Occupancy tax.

Property tax alternatives for resort cities, §50-1046.

MUNICIPAL CORPORATIONS

—Cont'd

Housing authorities, §§50-1901 to 50-1927.**Improvement districts.**

Business improvement districts, §§50-2601 to 50-2624.

Local improvement districts, §§50-1701 to 50-1772.

Income withholding.

Employees.

Wages.

Deductions from wages, §50-1016.

Incorporation.

Census, §50-103.

Disincorporation, §§50-2201 to 50-2214.

Effect of act, §50-201.

Notice.

Hearing on petition, §50-102.

Petitions, §§50-101, 50-102.

Hearing on petition, §50-102.

Notice, §50-102.

Proclamation of incorporation, §50-102.

Proof of corporate existence, §§50-104, 50-201.

Reorganization of cities organized under general laws, §§50-2301 to 50-2308.

Industrial development program,

§§50-2701 to 50-2723.

Bond issues.

Commingling of proceeds, §§50-2711, 50-2714.

Contest of validity of issuance proceedings, §50-2718.

Default.

Proceedings upon, §50-2717.

Defined, §50-2702.

Eligible investment, §50-2721.

Limitations on, §50-2706.

Maturity, §50-2710.

Powers of public corporations as to, §50-2708.

Provisions, §50-2710.

Publication of resolution authorizing issuance, §50-2718.

Refunding, §50-2712.

Reports, §50-2709.

Tax exemption, §50-2719.

Terms of bonds, §50-2710.

Trust agreements, §50-2713.

Conflicts of interest, §50-2705.

Conveyance of interest in project to user, §50-2722.

MUNICIPAL CORPORATIONS

—Cont'd

Industrial development program

—Cont'd

Definitions, §50-2702.

Investments, §50-2711.

Bonds eligible for investment,
§50-2721.

Leases.

Rent.

Determination, §50-2716.

Subleases and assignment,
§50-2715.

Taxation.

Effect as to, §50-2720.

Legislative declaration, §50-2701.

Misdemeanors.

Conflicts of interest, §50-2705.

Ordinances.

Defined, §50-2702.

Public corporations.

Creation, §50-2703.

Project costs.

Defined, §50-2702.

Publication.

Revenue bond proceedings,
§50-2718.

Public corporations.

Audit by state, §50-2707.

Board of directors, §50-2704.

Conflicts of interest, §50-2705.

Defined, §50-2702.

Number of members, §50-2704.

Conflicts of interest, §50-2705.

Creation, §50-2703.

Dissolution, §50-2703.

Powers, §50-2708.

Reports.

Revenue bonds, §50-2709.

Restrictions on, §50-2706.

Reports.

Revenue bonds.

Matters to be reported, §50-2709.

Supplemental nature of provisions,
§50-2723.

Taxation.

Bonds exempt, §50-2719.

Leases.

Effect, §50-2720.

Infractions.

City attorney.

Prosecution of state traffic
infractions committed within
municipal limits, §50-208A.

Initiative elections.

Applicable law, §50-473.

Ordinance providing for, §50-501.

MUNICIPAL CORPORATIONS

—Cont'd

Initiative elections —Cont'd

Petitions.

Ordinance providing for initiative,
§50-501.

Insurance.

Deductions from wages for insurance
premiums, §50-1016.

Investments.

Authorized investments, §50-1013.

Deferred compensation plans.

Deposits governed by prudent
investor act, §50-1013A.

Industrial development program,
§50-2711.

Bonds eligible for investment,
§50-2721.

Urban renewal.

Bonds as legal investments,
§50-2013.

Powers of urban renewal agency,
§50-2007.

**Irrigation systems, §§50-1801 to
50-1835.**

Accounts and accounting.

Adjustment and settlement of
accounts with irrigation
system in operation, §50-1831.

Acquisition or establishment.

Powers of cities, §§50-1801,
50-1834.

Assessments.

Action to quiet title against or test
validity of assessment,
§50-1829.

Annual assessments to defray
operating and maintenance
costs, §50-1807.

Apportionment of assessments,
§50-1814.

Apportionment of costs, §50-1806.

Board of correction, §50-1811.

Changes in assessment books,
§50-1811.

Collection, §50-1805.

Certificate showing amount of
collections, §50-1816.

Delinquent assessments, §50-1805.

Certificate showing amount of
delinquencies, §50-1816.

Entry, §50-1815.

List of delinquencies.

Compilation of alphabetical
list, §50-1817.

Filing of certified copy,
§50-1818.

Penalty, §50-1815.

MUNICIPAL CORPORATIONS

—Cont'd

Irrigation systems —Cont'd

Assessments —Cont'd

Delinquent assessments —Cont'd

Redemption of lands, §50-1819.

Unredeemed property deeded
to city, §50-1820.

Generally, §50-1805.

Irrigation districts.

Assessment of city irrigation
systems by irrigation
districts, §50-1830.

Liens, §50-1813.

Limitation of actions.

Action to quiet title against or
test validity of assessment,
§50-1829.

Notice.

Correction of assessments,
§50-1807.Correction of irregularities,
§50-1812.Time assessments become due,
§50-1814.

Remission, §50-1805.

Uniform method of allocation of
assessments and charges,
§50-1805A.Assignment of water stock to city,
§50-1803.

City water certificate, §50-1804.

Authorized, §50-1801.

Bond issues.

Allocation and accounting for
bonded indebtedness,
§50-1805A.

Coupon bonds.

Issuance, §50-1808.

Boundaries.

Ordinances or resolutions
establishing, §50-1832.

City water certificate, §50-1804.

Contracts.

Allocation and accounting for
contract indebtedness,
§50-1805A.

Distribution of water, §50-1805.

Powers of cities, §50-1834.

Control of ditches, §50-1809.

Ditches.

Power of cities to control
construction, enlargement,
etc., of ditches, §50-1809.Diversion works for city irrigation
system, §50-1833.

Eminent domain.

Powers of cities, §50-1801.

MUNICIPAL CORPORATIONS

—Cont'd

Irrigation systems —Cont'd

Funds.

Irrigation fund, §50-1806.

Liens.

Assessments, §50-1813.

Limitation of actions.

Actions to quiet title against or
test validity of assessment,
§50-1829.

Notice.

Assessments.

Correction of assessments,
§50-1807.Correction of irregularities,
§50-1812.Time assessments become due,
§50-1814.

Ordinances.

Boundaries.

Establishment, §50-1832.

Penalties.

Delinquent assessments, §50-1815.

Power of city to prescribe penalties
for interference, §50-1810.

Petitions, §50-1802.

Pooling of water rights for delivery,
§50-1805A.

Powers of cities, §50-1834.

Penalties.

Power to prescribe, §50-1810.

Severability of provisions, §50-1835.

Tax deeds.

Affidavit of compliance by
treasurer, §50-1822.

Contents, §50-1823.

Effect, §§50-1823, 50-1824.

Evidence.

Prima facie evidence of
regularity, §50-1824.

Execution of deed to city, §50-1825.

Form, §50-1823.

Notice.

Pending tax deed, §50-1821.

Payment of state and county taxes
by city, §50-1827.

Recitals, §50-1825.

Sale of land by city, §50-1826.

Disposal of proceeds, §50-1828.

Unredeemed property deeded to
city, §50-1820.**Jails.**

Violations of ordinances.

Confinement in city or county jail,
§50-302A.**Judgments.**

Payment of judgments, §50-217.

MUNICIPAL CORPORATIONS

—Cont'd

Judgments —Cont'd

- Separation of agricultural lands,
§50-230.
- Appeal from judgment, §50-233.

Judicial notice.

- Corporate existence, §§50-104,
50-201.

Jurisdiction.

- Subdivisions.
- Extraterritorial effects, §50-1306.

Leases.

- Business improvement districts.
- Disclosure requirements, §50-2623.
- Notification, §50-2624.
- Mines and mining.
- Lease by city, §50-234.

Liability.

- Bond issues.
- Revenue bonds.
- City not liable on bonds,
§50-1040.

Licenses.

- Amusements, §50-308.
- Fees.
- Disposition, §50-1015.
- Occupations and businesses.
- Power to levy and collect license
fees, §50-307.
- Occupations and businesses.
- Power to collect license fees,
§50-307.

Liens.

- Bond issues.
- Revenue bonds, §50-1039.
- Irrigation systems.
- Assessments, §50-1813.

Limitation of actions.

- Irrigation systems.
- Actions to quiet title against or
test validity of assessment,
§50-1829.
- Subdivisions.
- Vacation.
- Actions to establish adverse
rights or question validity of
vacation, §50-1323.
- Urban renewal.
- Contest of legality of ordinance,
resolution or proceedings or
bonds, §50-2027.

Local improvement districts,
§§50-1701 to 50-1772.**Mapping system.**

- Computerized mapping system,
§50-345.

MUNICIPAL CORPORATIONS

—Cont'd

Mayors, §50-203.

- Accounts and accounting.
- Power to require accounts from
officers, §50-605.
- Aid in enforcing law.
- Mayor may require, §50-609.
- Chief administrative officer of city,
§50-602.

City manager plan.

- Direct election, §50-809.
- Powers, §50-810.
- Selection by council, §50-809.
- Term of office, §50-809.

Compensation, §50-203.**Contracts.**

- Signing contracts, §50-607.

Council.

- Messages to council, §50-603.
- Presiding officer at meetings,
§50-602.

Special meetings of council.

- Power to call, §50-604.

Veto power of mayor, §50-611.**Election.**

- City manager plan, §50-809.
- Majority required for election,
§50-612.

Runoff elections, §50-612.**Ordinances.**

- Veto power, §50-611.
- Police powers, §50-606.

Powers.

- Aid in enforcing law.
- Power to require, §50-609.
- City manager plan, §50-810.
- Generally, §50-607.
- Police powers, §50-606.
- Veto power, §50-611.

Qualifications, §50-601.**Reports.**

- Power to require written reports
from officers, §50-605.

Term of office, §50-601.**City manager plan,** §50-809.**Vacancy in office,** §50-608.**Veto power,** §50-611.**Mines and mining.**

- Lease of mining property by city,
§50-234.

Misdemeanors.**City attorney.**

- Prosecution of state misdemeanors
committed within municipal
limits, §50-208A.

MUNICIPAL CORPORATIONS

—Cont'd

Misdemeanors —Cont'd

Finance.

Publication of financial statements.

Failure by city treasurer to
comply with requirements,
§50-1011.

Industrial development program.

Conflicts of interest, §50-2705.

Subdivisions.

Sanitary districts.

Violations of provisions,
§50-1329.Water systems encompassed by
plats.

Certification.

Failure to comply, §50-1334.

Monuments.

Subdivisions.

Interior monuments.

Marking after recording of plat,
§50-1332.

Setting, §50-1331.

Recording of plats with only
exterior monuments
referenced, §50-1333.**Motor vehicles.**

Parking.

Bond issues.

Revenue bonds, §§50-1027 to
50-1042.

Parking meters.

Disposition of parking fees,
§50-1015A.**Municipal elections, §§50-401 to
50-477.****Municipal industrial development
program, §§50-2701 to 50-2723.****Names.**

Corporate names, §50-201.

Newspapers.

Official newspaper, §50-213.

Notice.

Bond issues.

City coupon bonds.

Elections, §50-1026.

Pledge of revenues to be
described in notice,
§50-1026A.

Revenue bonds.

Elections, §50-1035.

Budgets.

Hearing on annual budget,
§50-1002.

Business improvement districts.

Establishment of district.

Hearing, §50-2605.

MUNICIPAL CORPORATIONS

—Cont'd

Notice —Cont'd

Civil service.

Abolition of system.

Proposed ordinance, §50-1601.

Elections, §50-436.

Changing polling places, §50-454.

Officers of election.

Appointment, §50-409.

Water, light, power and gas plants.

Sale or lease.

Election on question, §50-326.

Incorporation.

Hearing on petition, §50-102.

Irrigation systems.

Assessments.

Correction of assessments,
§50-1807.Correction of irregularities,
§50-1812.Time assessments become due,
§50-1814.

Real property.

Conveyances.

Declaration of intent, §50-1402.

Separation of agricultural lands.

Petition, §50-227.

Subdivisions.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation.

Hearing, §50-1306A.

Unincorporated areas and
cities not exercising their
corporate functions,
§50-1317.

Urban renewal.

Disposal of property in urban
renewal area, §50-2011.Hearing on urban renewal plan,
§50-2008.**Nuisances.**

Abatement of nuisances.

Powers of cities, §50-334.

Oaths.

City clerk.

Power to administer oaths,
§§50-207, 50-404.

Mayor.

Power to administer oaths,
§50-607.**Officers.**

Appointive officers.

Bonds, surety, §50-204.

City attorney, §50-204.

Enumerated, §50-204.

MUNICIPAL CORPORATIONS

—Cont'd

Officers —Cont'd

Appointive officers —Cont'd

Refusal by council to confirm appointments, §50-205.

Removal from office, §50-206.

Vacancies, §50-205.

Bonds, surety.

Appointive officers, §50-204.

City attorney, §50-204.

Consolidation of cities.

Election of officers of consolidated corporation, §50-2107.

Records.

Duties of city officials concerning records, §50-908.

Reorganization of cities organized under general laws.

Election of officers, §50-2308.

Ordinances.

Annexation, §50-222.

Filing of annexation ordinance, §50-223.

Effect, §50-224.

Appropriations.

Amending appropriation ordinance, §50-1003.

Annual appropriation ordinance, §50-1003.

Bond issues.

City coupon bonds, §50-1026.

Pledge of revenues, §50-1026A.

Revenue bonds.

Authorization of issuance, §50-1037.

Business improvement districts.

Changes in assessment rates, §50-2614.

Disestablishment of district, §50-2618.

Establishment of district, §50-2610.

City attorney.

Violations of ordinances.

Prosecution of, §50-208A.

Civil service.

Abolition of system.

Notice of proposed ordinance, §50-1601.

Departments to be governed by civil service.

Determination by ordinance, §50-1602.

Consolidation of cities.

Effect of ordinances of consolidated cities, §50-2112.

Emergencies.

Immediate operation in emergencies, §50-901.

MUNICIPAL CORPORATIONS

—Cont'd

Ordinances —Cont'd

Enforcement.

Powers of cities, §50-302.

Exclusion of territory, §50-225.

Franchise ordinances, §50-329.

Industrial development program.

Defined, §50-2702.

Public corporations.

Creation, §50-2703.

Initiative.

Ordinance providing for, §50-501.

Irrigation systems.

Boundaries.

Establishment, §50-1832.

Mayor.

Veto power, §50-611.

Passage of ordinances, §50-902.

Penalties.

Violations of ordinances, §50-302.

Powers of cities as to, §50-302.

Publication, §50-901.

City code.

Publication in book or pamphlet form, §50-906.

Summary of ordinances, §50-901A.

Referendum.

Ordinance providing for, §50-501.

Reorganization of cities organized under general laws.

Effect on ordinances, §50-2307.

Style, §50-901.

Summarization, §50-901A.

Taxation.

Property tax alternatives for resort cities.

Required provisions of ordinance, §50-1047.

Veto by mayor, §50-611.

Violations.

Confinement in city or county jail, §50-302A.

Corporations.

Prosecutions against corporations for violations, §50-215.

Penalties, §50-302.

When effective, §50-901.

Penalties.

Disposition of fines collected, §50-1015.

Parking fines, §50-1015A.

Irrigation systems.

Delinquent assessments, §50-1815.

Power of city to prescribe penalties for interference, §50-1810.

MUNICIPAL CORPORATIONS

—Cont'd

Penalties —Cont'd

Ordinances.

Violations of ordinances, §50-302.

Subdivisions.

Selling unplatted lots, §50-1316.

Perpetual succession, §50-201.**Personal property.**

Powers of cities as to, §50-301.

Petitions.

Appropriations.

Special appropriation upon
petition, §50-1003.

Business improvement districts.

Establishment of district, §50-2603.

Consolidation of cities, §50-2103.

Council-manager plan.

Elections.

Adoption of plan, §50-802.

Required signatures.

Calculation for number of,
§50-813.

Disincorporation, §50-2201.

Elections.

Initiative.

Ordinance providing for,
§50-501.Nominations, declaration of
candidacy, §50-430.

Filing petitions, §50-432.

Form of petition, §50-431.

Referendum.

Ordinance providing for,
§50-501.

Incorporation, §§50-101, 50-102.

Hearing on petition, §50-102.

Notice, §50-102.

Initiative.

Ordinance providing for initiative,
§50-501.

Irrigation systems, §50-1802.

Referendum.

Ordinance providing for, §50-501.

Reorganization of cities organized
under general laws, §50-2302.Separation of agricultural lands,
§50-226.

Fee, §50-227.

Hearing on, §§50-227, 50-229.

Notice, §50-227.

Notice, §50-227.

Subdivisions.

Vacation, §50-1306A.

Unincorporated areas and cities
not exercising their
corporate functions,
§50-1317.**MUNICIPAL CORPORATIONS**

—Cont'd

Policemen's retirement fund,
§§50-1501 to 50-1526.**Powers.**

Generally, §§50-301 to 50-345.

**Professions, vocations and
occupations.**Power to license and regulate,
§50-307.**Prudent investor act.**Investments of deposits of deferred
compensation plans, §50-1013A.**Publication.**

City code.

Publication in book or pamphlet
form, §50-906.

Elections.

Notice, §50-436.

Candidate filing deadlines,
§50-435.

Sample ballot, §50-440.

Financial statements, §50-1011.

Industrial development program.

Revenue bond proceedings,
§50-2718.

Ordinances, §50-901.

City code.

Publication in book or pamphlet
form, §50-906.

Summary of ordinances, §50-901A.

Public utilities.

Bond issues.

City coupon bonds.

Issuance to acquire utilities,
§50-1020.Joint services, §§50-1022 to
50-1025.

Revenue bonds.

General provisions, §§50-1027 to
50-1042.

Elections.

Lease or sale of water, light, power
and gas plants.

Election on question, §50-326.

Franchises.

Public service providers, §50-329A.

Joint services, §§50-1022 to 50-1025.

Lease of utilities.

Procedure, §50-326.

Sale of utilities.

Procedure, §50-326.

Transmission systems.

Power to regulate, §50-328.

Underground conversion of utilities,
§§50-2501 to 50-2523.**Railroads.**Power to regulate public carriers,
§50-306.

MUNICIPAL CORPORATIONS

—Cont'd

Real property.

Acquisition and control of lands
outside corporate limits, §50-220.

Annexation.

General provisions, §§50-222 to
50-224.

Conveyances.

Auctions.

Sale by public auction, §50-1403.

Authorized, §50-1401.

Declaration of intent, §50-1402.

Disposition of proceeds, §50-1405.

Land acquired by foreclosure,
§§50-1406, 50-1408.

Disposition procedures, §50-1403.

Land acquired by foreclosure.

Disposition of proceeds,
§§50-1406, 50-1408.

Leases, §§50-1407, 50-1409.

Public auction, §50-1404.

Powers of cities generally, §50-301.

Sale.

Disposition of proceeds,
§50-1405.

Disposition procedures, §50-1403.

Public auction, §50-1403.

Terms of sale, §50-1404.

Terms of sale, §50-1404.

Value of property, determining,
§50-1402.

Leases.

Conveyances, §§50-1407, 50-1409.

Mining property.

Lease by city, §50-234.

Powers as to, §50-301.

Separation of agricultural lands,
§§50-226 to 50-233.

Subdivisions.

General provisions, §§50-1301 to
50-1334.

Urban renewal.

General provisions, §§50-2001 to
50-2032.

Recall elections.

Applicable law, §50-472.

Recording.

Subdivisions.

Effect of recording plats, §50-1312.

Existing plats validated, §50-1315.

Vacation to be recorded, §50-1324.

Records.

Administration, §50-908.

Classification, §50-907.

Consolidation of cities.

Books of smaller city property of
new city, §50-2113.

MUNICIPAL CORPORATIONS

—Cont'd

Records —Cont'd

Copying.

Evidentiary effect of copies,
§50-909.

Definitions, §50-907.

Destruction, §50-907.

Disincorporation.

Disposition, §50-2207.

Elections.

Absentee ballots.

Applications for, §50-451.

Municipal records manager, §50-908.

Officers.

Duties of city officials concerning
records, §50-908.

Permanent records.

Defined, §50-907.

Retention, §50-907.

Photographic or digital retention,
§50-909.

Semipermanent records.

Defined, §50-907.

Subdivisions.

Plats, §50-1310.

Indexing of plat records,
§50-1311.

Vacations, §50-1324.

Temporary records, §50-907.

Recreation.

Facilities.

Powers as to, §50-303.

Taxation.

Special tax for recreational
purposes, §50-303.

Referendum.

Applicable law, §50-473.

Ordinance providing for, §50-501.

Petitions.

Ordinance providing for, §50-501.

**Reorganization of cities organized
under general laws, §§50-2301 to
50-2308.**

Authorized, §50-2301.

Council.

Governing body to continue in
office, §50-2304.

Effect, §§50-2305, 50-2307.

Elections.

Officers, §50-2308.

Submission of proposition to
electorate, §§50-2302, 50-2303.

Judicial notice.

Corporate existence, §50-2306.

Officers.

Election of officers, §50-2308.

MUNICIPAL CORPORATIONS

—Cont'd

Reorganization of cities organized under general laws —Cont'd

Ordinances.

Effect on ordinances, §50-2307.

Petitions, §50-2302.

Proclamation by governor, §50-2303.

Proof of corporate existence,
§50-2306.**Reports.**

Annexation, §50-222.

Elections.

Campaign reporting law.

Applicability of provisions to
certain city elections,
§50-477.

Industrial development program.

Revenue bonds.

Matters to be reported, §50-2709.

Mayor.

Power to require written reports
from officers, §50-605.

Urban renewal.

Annual report by urban renewal
agency, §50-2006.**Resort cities.**

Taxation.

Property tax alternatives,
§§50-1043 to 50-1049.**Retirement.**

City retirement and pension plan.

Adoption authorized, §50-1016.

Deductions from wages for,
§50-1016.

Policemen's retirement fund,

§§50-1501 to 50-1526.

Rights of way.

Subdivisions.

Public right of way, §50-1315.

Defined, §50-1301.

Jurisdiction within highway
district, §50-1330.**Riots.**Power to prevent and restrain,
§50-308.**Rules and regulations.**

Civil service commission, §50-1603.

Subdivisions.

Sanitary restrictions.

Administration and enforcement,
§50-1328.**Saving provisions.**Prior incorporated cities and villages,
§§50-201, 50-202.**Seals and sealed instruments.**Power to have and alter common
seal, §50-301.**MUNICIPAL CORPORATIONS**

—Cont'd

Separation of agricultural lands,

§§50-226 to 50-233.

Appeal, §50-233.

Bond issues.

Liability for bonded indebtedness,
§50-231.

Judgment of separation, §50-230.

Appeal, §50-233.

Notice.

Petition, §50-227.

Petitions, §50-226.

Fee, §50-227.

Hearing on, §50-229.

Notice, §50-227.

Notice, §50-227.

Protests.

Reply to, §50-228.

Streets.

Not affected by separation,
§50-232.**Service of process.**

Corporations.

Prosecutions under city ordinances,
§50-215.

Officers on whom served, §50-201.

Sewers.

Bond issues.

City coupon bonds.

Issuance to acquire sewerage
systems, §50-1020.Joint services, §§50-1022 to
50-1025.

Revenue bonds.

Bond anticipation note,
§50-1036.

Conditions, §§50-1036, 50-1037.

Election prior to incurring debt,
§50-1035.Expenses may be incurred before
issue, §50-1034.

Form, §50-1036.

Interest.

Issuance of bonds at rate
exceeding original
specifications, §50-1035A.

Liability.

City not liable, §50-1040.

Liens, §50-1039.

Management and care of work,
§50-1028.Ordinance prior to construction,
§50-1035.Powers of city as to work,
§50-1030.

Projects.

Revenues used to pay bonds,
§50-1033.

MUNICIPAL CORPORATIONS

—Cont'd

Sewers —Cont'd

Bond issues —Cont'd

Revenue bonds —Cont'd

Projects —Cont'd

Self supporting project,
§50-1032.

Supervision, §50-1031.

Use of project, §50-1033.

Revenues of projects to pay
bonds, §50-1033.

Short title, §50-1025.

Special obligation nature of
bond, §50-1040.

Taxation.

Exemption from taxation,
§50-1042.Levy to pay bonds prohibited,
§50-1041.

Terms, §50-1037.

Validity, §50-1038.

Definitions, §50-1029.

Improvements.

Powers of cities, §50-315.

Management and care of system,
§50-1028.Powers as to sewers and drains,
§§50-332, 50-1030.

Projects.

Election prior to incurring debt,
§50-1035.

Expenses.

Payment of preliminary
expenses, §50-1034.Ordinances prior to construction,
§50-1035.

Revenue, §50-1033.

Self supporting projects required,
§50-1032.

Supervision, §50-1031.

Use, §50-1033.

Subdivisions.

Plans and specifications of water
and sewage systems.Submission to department of
environmental quality,
§§50-1326, 50-1329.**Sidewalks.**

Obstructions.

Removal.

Powers of cities, §50-314.

Powers of cities generally, §§50-316,
50-317.

Rubbish.

Removal.

Powers of cities, §50-317.

MUNICIPAL CORPORATIONS

—Cont'd

Sidewalks —Cont'd

Snow and ice.

Removal.

Powers of cities, §50-317.

Slums.Urban renewal, §§50-2001 to
50-2032.**Solid waste.**

Collection systems.

Authority to maintain and operate,
§50-344.Solid waste collection systems,
§50-344.**Status,** §50-201.**Streets.**

Creation of streets, §50-311.

Dedication of streets and alleys.

Subdivisions, §50-1309.

Eminent domain, §50-311.

Improvements.

Powers as to, §§50-312, 50-315.

Taxation.

Special levy, §50-312.

Jurisdiction.

Public streets within highway
district, §50-1330.Local improvement districts,
§§50-1702 to 50-1704.

Naming of streets, §50-318.

Numbering of houses, §50-318.

Private roads.

Dedication to public.

Subdivisions, §50-1309.

Regulation and supervision.

Powers as to, §§50-313, 50-314.

Utility transmission systems.

Power of city to regulate, §50-328.

Vacation of streets, §50-311.

Plats or parts of plats of
subdivisions, §50-1306A.Reversion of vacated streets,
§50-311.**Subdivisions,** §§50-1301 to 50-1334,
50-2001 to 50-2032.

Acknowledging plats.

Effect, §50-1312.

Appeals.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation, §50-1322.

Dedication of streets and alleys,
§50-1309.Acceptance of dedication required,
§50-1313.

Private roads to public, §50-1309.

MUNICIPAL CORPORATIONS

—Cont'd

Subdivisions —Cont'd

Deed in fee simple.

Effect of acknowledging and recording plat, §50-1312.

Definitions, §50-1301.

Easements.

Defined, §50-1301.

Vacation, §50-1325.

Essentials of plats, §50-1304.

Extraterritorial effects, §50-1306.

Fees.

Plats.

Verification, §50-1305.

Interior monuments.

Marking after recording of plat, §50-1332.

Private roads, §50-1309.

Public streets within highway district, §50-1330.

Setting, §50-1331.

Misdemeanors.

Sanitary districts, §50-1329.

Water systems encompassed by plats.

Certification.

Failure to comply with section, §50-1334.

Monuments.

Interior monuments.

Marking after recording of plat, §50-1332.

Setting, §50-1331.

Recording of plats with only exterior monuments referenced, §50-1333.

Notice.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation.

Hearing, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §50-1317.

Owner.

Defined, §50-1301.

Duties, §50-1302.

Penalties.

Selling unplatted lots, §50-1316.

Petitions.

Vacation, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §50-1317.

MUNICIPAL CORPORATIONS

—Cont'd

Subdivisions —Cont'd

Plats.

Approval, §50-1308.

Certification, §50-1309.

Defined, §50-1301.

Distinctiveness.

Designation of townsite and addition, §50-1307.

Effect of acknowledging and recording plat, §50-1312.

Enforcement of requirement of plat, §50-1314.

Existing plats validated, §50-1315.

Filing, §50-1310.

Nonconforming map or plat.

Prohibited, §50-1327.

Nonconforming map or plat.

Filing or recording prohibited, §50-1327.

Records, §50-1310.

Indexing of plat records, §50-1311.

Recording plats.

Effect, §50-1312.

Existing plats validated, §50-1315.

Required, §50-1302.

Requisites, §50-1304.

Sanitary restrictions.

Requirements, §50-1326.

Selling unplatted lots.

Penalty, §50-1316.

Submission to planning commission, §50-1308.

Vacation of plats.

Adverse rights.

Limitation of actions to establish, §50-1323.

Appeals, §§50-1320, 50-1322.

Cemetery plats, §50-1306A.

Consent required, §50-1321.

Easements, §50-1325.

Limitation of actions to establish adverse rights or question validity of vacation, §50-1323.

Procedure, §50-1306A.

Recordation, §50-1324.

Streets, §50-1306A.

Appeals, §50-1322.

Cities not exercising corporate functions, §§50-1317 to 50-1319.

Consent required, §50-1321.

Unincorporated areas, §§50-1317 to 50-1319.

MUNICIPAL CORPORATIONS

—Cont'd

Subdivisions —Cont'd

Plats —Cont'd

Vacation of plats —Cont'd

Title.

Vesting upon vacation,
§50-1320.

Validity of vacation.

Limitation of actions on
question of, §50-1323.

Validation of existing plats,
§50-1315.

Verification, §50-1305.

Water systems encompassed by
plats.

Review of, §50-1334.

Private road.

Dedication to public, §50-1309.

Defined, §50-1301.

Jurisdiction over, §50-1309.

Public highway agency.

Defined, §50-1301.

Public land survey corners.

Defined, §50-1301.

Public right of way.

Defined, §50-1301.

Jurisdiction within highway
district, §50-1330.

Public street never laid out and
constructed to standards of
appropriate highway agency,
§50-1315.

Public street defined, §50-1301.

Recording plats.

Effect, §50-1312.

Existing plats validated, §50-1315.

Records.

Plats, §50-1310.

Indexing of plat records,
§50-1311.

Vacation, §50-1324.

Rules and regulations.

Sanitary restrictions.

Administration and enforcement,
§50-1328.

Sanitary restrictions, §50-1326.

Appeals.

Reimposition, §50-1326.

Defined, §50-1301.

Noncomplying map or plat.

Filing or recording prohibited,
§50-1327.

Notice.

Reimposition, §50-1326.

Plats to bear, §50-1326.

Reimposition, §50-1326.

MUNICIPAL CORPORATIONS

—Cont'd

Subdivisions —Cont'd

Sanitary restrictions —Cont'd

Removal, §50-1326.

Reimposition, §50-1326.

Rules for administration and
enforcement, §50-1328.

Violations, §50-1329.

Sewers.

Plans and specifications of water
and sewage systems.

Submission to department of
environmental quality,
§§50-1326, 50-1329.

Streets.

Adjoining owners.

Consent required for vacation,
§50-1321.

Dedication of streets and alleys,
§50-1309.

Dedication must be accepted,
§50-1313.

Defined, §50-1301.

Jurisdiction of public streets in
highway district, §50-1330.

Public streets defined, §50-1301.

Survey, §50-1303.

Monuments, §50-1303.

Required, §50-1302.

Verification of plats, §50-1305.

Vacation.

Adjoining owners.

Consent required, §50-1321.

Appeal from order granting or
denying, §50-1322.

Cemeteries.

All or portion of cemetery plats,
§50-1306A.

Easements, §§50-1306A, 50-1325.

Limitation of actions to establish
adverse rights or question
validity of vacation, §50-1323.

Notice.

Hearing, §50-1306A.

Unincorporated areas and
cities not exercising their
corporate functions,
§50-1317.

Petitions, §50-1306A.

Unincorporated areas and cities
not exercising their
corporate functions,
§50-1317.

Plats.

Cemetery plats, §50-1306A.

Easements.

Public utility easements,
§50-1306A.

MUNICIPAL CORPORATIONS

—Cont'd

Subdivisions —Cont'd

Vacation —Cont'd

Plats —Cont'd

Notice.

Exception for public utility easements, §50-1306A.

Public utility easements, §50-1306A.

Streets, §50-1306A.

Procedure, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §§50-1317 to 50-1319.

Streets.

All or portion of plats of streets, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions.

Notice.

Hearing, §50-1317.

Opposition.

Grant of petition in absence of opposition, §50-1318.

Procedure in presence of opposition, §50-1319.

Petitions, §50-1317.

Vesting of title on vacation, §50-1320.

Water supply and waterworks.

Plans and specifications of water and sewage systems.

Submission to department of environmental quality, §§50-1326, 50-1329.

Water systems encompassed by plats.

Certification, §50-1334.

Failure to comply with section, §50-1334.

Surveys and surveyors.

Subdivisions, §§50-1302, 50-1303, 50-1305.

Urban renewal.

Powers of urban renewal agency, §50-2007.

Taxation.

Annexation.

Effect of annexation, §50-224.

Aviation facilities.

Acquisition, operation and maintenance.

Special levy, §50-321.

MUNICIPAL CORPORATIONS

—Cont'd

Taxation —Cont'd

Bond issues.

Revenue bonds.

Exemption of projects and bonds, §50-1042.

Levy to pay bonds.

Prohibited, §50-1041.

Capital improvement fund levy, §50-236.

Cemeteries.

Acquisition.

Levy of tax, §50-320.

Certification of city taxes, §50-1007.

City property tax alternatives act, §§50-1043 to 50-1049.

Nonproperty taxes.

Adoption.

Vote required, §50-1046.

Authorized, §50-1044.

Collection and administration by state tax commission, §50-1049.

County local-option nonproperty taxes.

Coordination with, §50-1048.

Distribution of proceeds, §50-1049.

Election on, §§50-1044, 50-1046.

Ordinances assessing.

Required provisions, §50-1047.

Property tax relief fund, §50-1045.

Short title, §50-1043.

Collection of taxes.

Certification of city taxes, §50-1007.

Special assessments, §50-1008.

Consolidation of cities.

Effect of consolidation, §50-2109.

Prior indebtedness.

No property to be taxed for, §50-2110.

Disincorporation.

Current tax levies.

Collection and disposition, §50-2209.

Subsequent tax levies.

Authorized, §50-2210.

Elections.

Property tax alternatives for resort cities.

Nonproperty taxes, §§50-1044, 50-1046.

Industrial development program.

Bonds exempt, §50-2719.

Leases.

Effect, §50-2720.

MUNICIPAL CORPORATIONS

—Cont'd

Taxation —Cont'd

Levy of taxes.

Capital improvement fund levy,
§50-236.

General and special purposes,
§50-235.

Recreational programs.

Special tax, §50-303.

Ordinances.

Property tax alternatives for resort
cities.

Required provisions of ordinance,
§50-1047.

Property tax alternatives for resort
cities, §§50-1043 to 50-1049.

Citation of act.

Short title, §50-1043.

Nonproperty taxes.

Adoption.

Vote required, §50-1046.

Authorized, §50-1044.

Collection and administration by
state tax commission,
§50-1049.

County local-option nonproperty
taxes.

Coordination with, §50-1048.

Distribution of proceeds,
§50-1049.

Election on, §§50-1044, 50-1046.

Ordinances assessing.

Required provisions, §50-1047.

Property tax relief fund, §50-1045.

Title of act.

Short title, §50-1043.

Purposes.

Levy for general and special
purposes, §50-235.

Recreational programs.

Levy of special tax, §50-303.

Resort cities.

Property tax alternatives,
§§50-1043 to 50-1049.

Special assessments.

Collection, §50-1008.

Warrant redemption fund,
§50-1004.

Widow's exemption, §50-1008.

Streets.

Improvement.

Special levy, §50-312.

Urban renewal.

Property of urban renewal agency.
Exemption, §50-2014.

Theaters.

Power to license and regulate,
§50-308.

MUNICIPAL CORPORATIONS

—Cont'd

Transit systems.

Powers as to, §50-322.

**Underground conversion of public
utilities, §§50-2501 to 50-2523.**

Urban renewal, §§50-2001 to 50-2032.

Actions.

Contest of legality of ordinance,
resolution or proceedings or
bonds.

Limitations, §50-2027.

Appropriations.

Powers of municipalities as to
urban renewal projects,
§50-2015.

Area of operation.

Defined, §50-2018.

Audit requirements, §50-2006.

Bond issues.

Contest of legality.

Limitations, §50-2027.

Cooperation by public bodies.

Power of municipalities to issue
bonds, §50-2015.

Definition of "bonds," §50-2018.

Generally, §50-2012.

Legal investments, §50-2013.

Obligees.

Defined, §50-2018.

Sale of bonds, §50-2012.

Citation of law.

Short title, §50-2001.

Conflicts of interest, §50-2017.

Conveyances.

Title of purchaser, §50-2016.

Definitions, §50-2018.

Deteriorated areas.

Defined, §50-2018.

Deteriorating areas.

Defined, §50-2018.

Eminent domain.

Powers of urban renewal agencies,
§§50-2007, 50-2010.

Executions.

Property of urban renewal agency.
Exemption from levy and sale,
§50-2014.

Investments.

Bonds as legal investments,
§50-2013.

Powers of urban renewal agency,
§50-2007.

Legislative declaration, §50-2002.

Encouragement of private
enterprise, §50-2003.

MUNICIPAL CORPORATIONS

—Cont'd

Urban renewal —Cont'd

Limitation of actions.

Contest of legality of ordinance,
resolution or proceedings or
bonds, §50-2027.

Local governing bodies.

Defined, §50-2018.

Finding of necessity by, §50-2005.

Notice.

Disposal of property in urban
renewal area, §50-2011.Hearing on urban renewal plan,
§50-2008.Powers of urban renewal agency,
§50-2007.

Private enterprise.

Encouragement, §50-2003.

Public bodies.

Cooperation by public bodies,
§50-2015.

Defined, §50-2018.

Real property.

Acquisition, §50-2010.

Conveyances.

Title of purchaser, §50-2016.

Defined, §50-2018.

Disposal, §50-2011.

Powers of urban renewal agency as
to, §50-2007.

Reports.

Annual report by urban renewal
agency, §50-2006.

Revenue allocation.

Bond issues.

Limitation on review of issuance,
§50-2027.Review of adoption or modification
of plan.

Limitations on, §50-2027.

Severability of provisions, §§50-2031,
50-2032.

Surveys and surveyors.

Powers of urban renewal agency,
§50-2007.

Taxation.

Property of urban renewal agency.
Exemption, §50-2014.

Title of law.

Short title, §50-2001.

Urban renewal agency.

Board of commissioners, §50-2006.

Conflicts of interest, §50-2017.

Creation, §50-2006.

Defined, §50-2018.

Powers, §50-2007.

MUNICIPAL CORPORATIONS

—Cont'd

Urban renewal —Cont'dUrban renewal agency —Cont'd
Reports.

Annual report, §50-2006.

Urban renewal area.

Defined, §50-2018.

Urban renewal plan.

Approval, §50-2008.

Community-wide plans, §50-2009.

Defined, §50-2018.

Hearing on, §50-2008.

Notice, §50-2008.

Modification, §50-2008.

Neighborhood plans, §50-2009.

Preparation, §50-2008.

Urban renewal projects.

Defined, §50-2018.

Powers of municipalities as to,
§50-2015.Powers of urban renewal agency as
to, §50-2007.

Prerequisites, §50-2008.

Workable program, §50-2004.

Vacation of plats, §§50-1301 to
50-1334.**Vagrancy.**

Powers as to vagrants, §50-308.

Veto.

Mayor.

Power of veto, §50-611.

Warrants for payment of money.

Special tax assessment.

Warrant redemption fund,
§50-1004.**Waters and watercourses.**

Powers as to, §50-331.

Waters of the state.Cities situated on navigable lakes
and streams.Extension of boundaries into
waters, §50-221.**Water supply and waterworks.**

Bond issues.

City coupon bonds.

Issuance to acquire waterworks,
§50-1020.Joint services, §§50-1022 to
50-1025.Revenue bonds, §§50-1027 to
50-1042.

Domestic water systems.

Defined, §50-323.

Powers as to, §50-323.

Joint water systems.

Power to jointly purchase or lease,
maintain or operate, §50-324.

MUNICIPAL CORPORATIONS

—Cont'd

Water supply and waterworks

—Cont'd

Lease or sale of water plants.

Procedure, §50-326.

Management and care of waterworks,
§50-1028.

Projects.

Election prior to incurring debt,
§50-1035.

Expenses.

Payment of preliminary
expenses, §50-1034.Ordinances prior to construction,
§50-1035.

Revenue, §50-1033.

Self supporting projects required,
§50-1030.

Supervision, §50-1031.

Use, §50-1033.

Sale of surplus water, §50-1030.

Subdivisions.

Plans and specifications of water
and sewage systems.Submission to department of
environmental quality,
§§50-1326, 50-1329.Water systems encompassed by
plats.

Certification, §50-1334.

Weapons.

Concealed weapons.

Powers as to carrying of concealed
weapons, §50-808.**Witnesses.**

Council.

Compelling attendance, §50-216.

Year.

Fiscal year, §50-1001.

**MUNICIPAL ELECTIONS, §§50-401
to 50-477.****MUNICIPAL INDUSTRIAL
DEVELOPMENT PROGRAM,
§§50-2701 to 50-2723.****Bond issues, §§50-2708 to 50-2714,
50-2717 to 50-2719.**

Defined, §50-2702.

Eligible investment, §50-2721.

Limitations on, §50-2706.

Conflicts of interest, §50-2705.**Conveyance of interest in project
to user, §50-2722.****Definitions, §50-2702.****Investments, §50-2711.**Bonds eligible for investment,
§50-2721.**MUNICIPAL INDUSTRIAL
DEVELOPMENT PROGRAM**

—Cont'd

Leases, §§50-2715, 50-2716.

Tax effect, §50-2720.

Legislative declaration, §50-2701.**Misdemeanors.**

Conflicts of interest, §50-2705.

Ordinances.

Defined, §50-2702.

Public corporations.

Creation, §50-2703.

Project cost.

Defined, §50-2702.

Publication.

Revenue bond proceedings, §50-2718.

**Public corporations, §§50-2703 to
50-2709.**Board of directors, §§50-2704,
50-2705.

Defined, §50-2702.

Reports.

Revenue bonds.

Matters to be reported, §50-2709.

**Supplemental nature of provisions,
§50-2723.****Taxation.**

Bond exemptions, §50-2719.

Leases.

Effect, §50-2720.

N**NAMES.****Assumed business names, §§53-501
to 53-510.****Corporations.**Assumed business names, §§53-501
to 53-510.**Limited liability companies****(repealed 7/1/2010), §53-602.**

Foreign limited liability companies.

Requirements for registration,
§53-653.

Reservation, §53-603.

Limited partnerships, §53-2-108.Foreign limited partnerships,
§53-2-905.

Reservation of name, §53-2-109.

Municipal corporations.

Corporate names, §50-201.

Notaries public.

Change of name.

Notice to secretary of state,
§51-111.**Partnerships.**

Limited liability partnerships.

Use of abbreviation or name,
§53-3-1002.

NAMES —Cont'd**Partnerships —Cont'd**

- Limited partnerships, §53-2-108.
- Foreign limited partnerships,
§53-2-905.
- Reservation of name, §53-2-109.
- Partner's disassociation when
business not wound up.
- Continued use of partnership
name, §53-3-705.

NEWSPAPERS.**Municipal corporations.**

- Official newspaper, §50-213.

NONPROFIT ASSOCIATIONS.**Unincorporated associations.**

- Generally, §§53-701 to 53-717.

NONPROFIT CORPORATIONS.**City hospitals.**

- Conveyance or lease to nonprofit
corporation, §50-305.

NOTARIES PUBLIC, §§51-101 to 51-123.**Acknowledgments.**

- Power to take acknowledgments,
§51-107.

Affidavits.

- Certification.
- Power, §51-107.

Age.

- Qualifications for appointment,
§51-104.

Applicability of provisions.

- Notaries commission under prior law,
§51-123.

Appointment.

- Application for, §51-105.
- Fee for filing, §51-121.
- Procedure, §51-105.
- Qualifications, §51-104.
- Reappointment, §51-103.
- Secretary of state, §51-103.

Bonds, surety, §51-105.

- Cancellation of bond.
- Fee for filing, §51-121.
- Removal from office.
- Cancellation of bond, §51-114.

Cancellation of commission, §51-114.

- Procedure, §51-116.

Change of name or residence.

- Notice to secretary of state, §51-111.

Citation of act.

- Short title, §51-101.

Conflicts of interest.

- Disqualifying interests, §51-108.

Conviction of serious crime.

- Definition of "serious crime," §51-102.

NOTARIES PUBLIC —Cont'd**Conviction of serious crime —Cont'd**

- Removal from office.
- Grounds, §51-113.
- Procedure, §51-114.

Criminal offenses.

- Conviction of serious crime.
- Definition of "serious
crime," §51-102.
- Removal from office, §§51-113,
51-114.
- Criminal penalties, §51-119.

Death.

- Cancellation of commission.
- Procedure, §51-116.
- Notice to secretary of state, §51-115.

Definitions, §51-102.**Depositions.**

- Certification.
- Power, §51-107.

Duties, §51-111.**Fees, §51-110.**

- Excessive fees.
- Official misconduct, §51-112.
- Filing fees, §51-121.

Felonies.

- Seals.
- Stealing or wrongfully possessing
notary's seal, §51-119.

Forms.

- Notarial acts, §51-109.

Fraud.

- Official misconduct, §51-112.

Handbook, §51-120.**Incompetent notaries.**

- Removal procedure, §51-114.

Jurisdiction, §51-107.**Liability.**

- Civil liability of notary public and
employer, §51-118.

Misdemeanors.

- Criminal penalties, §51-119.

Names.

- Change of name.
- Notice to secretary of state,
§51-111.

Notary handbook, §51-120.**Notice.**

- Cancellation of notary's bond,
§51-114.
- Change of name or residence.
- Notice to secretary of state,
§51-111.

Death.

- Notice to secretary of state,
§51-115.
- Fees for filing, §51-121.

NOTARIES PUBLIC —Cont'd**Notice —Cont'd**

Information that notary no longer
resident or employed or doing
business in state.

Opportunity to rebut, §51-114.

Oaths.

Forms, §51-109.

Power to administer oaths and
affirmations, §51-107.

Required, §51-105.

Official misconduct, §51-112.

Liability.

Civil liability, §51-118.

Misdemeanor, §51-119.

Removal from office, §51-113.

Procedure, §51-114.

Powers, §51-107.**Qualifications, §51-104.****Removal from office.**

Bonds, surety.

Cancellation of bond, §51-114.

Cancellation of commission.

Procedure, §51-116.

Grounds, §51-113.

Procedure, §51-114.

Residence.

Change.

Notice to secretary of state,
§51-111.

Qualifications for appointment,
§51-104.

Removal procedure.

Notary no longer resident of state,
§51-114.

Resignation, §51-115.

Cancellation of commission.

Procedure, §51-116.

**Seals and sealed instruments,
§51-106.**

Stealing or wrongfully possessing
seal.

Felony, §51-119.

Secretary of state.

Appointment, §51-103.

Cancellation of commission of notary,
§51-114.

Cancellation of notary's bond.

Notice filed with secretary,
§51-114.

Submittal of application to, §51-105.

Severability of provisions, §51-122.**Short title of act, §51-101.****Signatures.**

Powers to certify affixation of
signature by mark or to sign for
person physically unable to,
§51-107.

NOTARIES PUBLIC —Cont'd**Terms of office, §51-103.****Title of act.**

Short title, §51-101.

Transition provisions, §51-123.**Validity of notarial acts.**

Conditions impairing, §51-117.

NOTICE.**Community infrastructure
districts.**

Creation of district.

Hearing, §50-3103.

Disclosure of obligations, §50-3115.

Dissolution of district, §50-3116.

Elections, §50-3112.

Special assessments.

Hearing, §50-3109.

**Limited liability companies
(repealed 7/1/2010).**

Charging knowledge or notice of
member or manager to company,
§53-618.

Defined, §53-667.

Dissolution, §53-648.

Foreign limited liability company
registration amendment,
§53-654.

Withdrawal of member, §53-641.

Limited partnerships.

Dissolution.

Claims known at time of
dissolution, §53-2-806.

Claims not known at time of
dissolution, §53-2-807.

Foreign limited partnerships.

Certificate of authority, revocation,
§53-2-906.

When person has notice and
knowledge, §53-2-103.

Notaries public.

Cancellation of notary's bond,
§51-114.

Change of name or residence.

Notice to secretary of state,
§51-111.

Death.

Notice to secretary of state,
§51-115.

Fees for filing, §51-121.

Information that notary no longer
resident or employed or doing
business in state.

Opportunity to rebut, §51-114.

Nuisances.

Injunctions.

When parties deemed to have
knowledge of nuisance,
§52-105.

NOTICE —Cont'd**Nuisances** —Cont'd

Moral nuisances.

Hearing on temporary injunction,
§52-405.

Private nuisance abatement.

When notice required, §52-303.

Partnerships.

Knowledge and notice, §53-3-102.

Limited partnerships.

Dissolution.

Claims known at time of
dissolution, §53-2-806.Claims not known at time of
dissolution, §53-2-807.

Foreign limited partnerships.

Certificate of authority,
revocation, §53-2-906.When person has notice and
knowledge, §53-2-103.

Mining partnerships.

Recording contracts constitutes
constructive notice, §53-412.**Public utilities.**

Underground conversion of utilities.

Assessments, §50-2512.

Resolution declaring intention to
create district and hearing on
protest, §50-2508.**NUISANCES.****Abatement.**Actions not precluded by abatement,
§52-110.Liability of successive owners for
continuing nuisance, §52-109.

Moral nuisances.

Liens as to expenses of abatement,
§52-415.

Notice.

Private nuisances.

When notice required, §52-303.

Private nuisances.

Remedies, §52-301.

When abatement allowed, §52-302.

Private persons, §52-206.

Public nuisances.

Public bodies or officers, §52-205.

Remedies against public nuisance,
§52-202.**Accounts and accounting.**

Moral nuisances.

Moneys received by defendant,
§52-415.**Actions.**

Abatement.

Action for damages not precluded
by abatement, §52-110.**NUISANCES** —Cont'd**Actions** —Cont'd

Authorized, §52-111.

Evidence, §52-409.

Priority of actions, §52-408.

Private persons.

When private person may maintain
action, §52-204.Remedies against public nuisances,
§52-202.**Assignment.**

Admission or finding of guilt

admissible for purpose of proving
existence of nuisance, §52-409.**Attorney general.**

Moral nuisances.

Who may maintain action, §52-402.

Bonds, surety.

Moral nuisances.

Actions instituted by private
persons.

Execution of bond, §52-402.

Breach of the peace.

Abatement.

Abatement allowed without
committing breach of the
peace, §52-302.**Buildings.**

Gambling.

Building where gambling carried
on, §52-106.

Moral nuisances.

Leases.

Void if building used for lewd
purposes, §52-414.**Contempt.**

Moral nuisances.

Violations of injunction or order
contempt, §52-413.Orders restraining removal of
personal property from premises.Violation of restraining order
constitutes contempt, §52-404.**Continuing nuisances.**Liability of successive owners,
§52-109.**Costs.**

Moral nuisances.

Actions to abate, §52-411.

Criminal offenses.

Obscenity.

Immunity, §52-416.

Criminal procedure.

Actions to abate moral nuisances.

Admissibility of admissions or
findings of guilt, §52-409.Evidence of reputation admissible,
§52-410.

NUISANCES —Cont'd**Damages.**

Abatement.

Actions for damages not precluded by abatement, §52-110.

Moral nuisances, §52-415.

Definitions, §52-101.

Moral nuisances, §52-103.

Private nuisances, §52-107.

Evidence.

Moral nuisances.

Actions for abatement, §52-409.

Evidence of reputation admissible, §52-410.

Reputation.

Actions to abate moral nuisances.

Evidence of reputation admissible, §52-410.

Forfeitures.

Moral nuisances.

Personal property subject to forfeiture, §52-415.

Temporary forfeiture of use of real and personal property, §52-406.

Gambling.

Moral nuisances.

Buildings where gambling carried on, §52-106.

Highways.

Obstructing free passage or use.

Definition of nuisance, §52-101.

Immunity.

Motion picture films.

Immunity of projectionists, ushers or ticket takers, §52-416.

Indictments.

Remedies against public nuisance, §52-202.

Remedy by indictment.

Regulated by penal code, §52-203.

Informations.

Remedies against public nuisance, §52-202.

Remedy of information regulated by penal code, §52-203.

Injunctions.

Moral nuisances.

Temporary injunctions.

Application, §52-403.

Notice of hearing, §52-405.

Right to possession of real property and personal property after hearing on temporary injunction, §52-406.

Violation of injunction contempt, §52-413.

NUISANCES —Cont'd**Judgments.**

Moral nuisances.

Actions to abate, §52-411.

Content of final judgment and order, §52-412.

Jurisdiction.

Moral nuisances.

Actions to abate, §52-403.

Lapse.

Public nuisances not legalized by lapse of time, §52-201.

Leases.

Moral nuisances.

Lease void if building used for lewd purposes, §52-414.

Lewdness.

Admissibility of admission or finding of guilt under criminal laws, §52-409.

Liability.

Continuing nuisances.

Liability of successive owners, §52-109.

Liens.

Moral nuisances.

Actions to abate.

Lien as to expenses, §52-415.

Moral nuisances.

Abatement.

Liens as to expenses of abatement, §52-415.

Accounts and accounting.

Moneys received by defendants declared to be public nuisance, §52-415.

Actions, §52-111.

Content of final judgment and order, §52-412.

Costs, §52-411.

Evidence, §52-409.

Reputations, §52-410.

Judgments, §52-411.

Liens as to expenses of abatement, §52-415.

Priorities, §52-408.

Private citizens, §52-402.

Private persons, §52-204.

Who may maintain, §52-402.

Attorney general.

Who may maintain action, §52-402.

Bonds, surety.

Actions instituted by private persons.

Execution of bond, §52-402.

Buildings.

Gambling, §52-106.

NUISANCES —Cont'd**Moral nuisances —Cont'd****Buildings —Cont'd**

Lease void if building used for lewd purposes, §52-414.

Construction and interpretation.

Severability of provisions, §52-417.

Contempt.

Violations of order or injunction, §52-413.

Contraband.

Lewd matter as contraband having no property rights, §52-415.

Definitions, §52-103.**Evidence.**

Actions, §52-409.

Forfeitures.

Temporary forfeiture of use of real and personal property, §52-406.

Gambling.

Buildings where gambling carried on, §52-106.

Hearings.

Temporary injunction.

Notice of hearing, §52-405.

Injunctions.

Temporary injunction.

Application, §52-403.

Violation of injunction contempt, §52-413.

Judgments.

Actions to abate moral nuisance, §52-411.

Jurisdiction.

Actions to abate, §52-403.

Knowledge.

Defined, §§52-103, 52-105.

Leases.

Buildings used for lewd purposes.

Lease void, §52-414.

Lewd films.

Exhibition deemed moral nuisance, §52-104.

Lewd matters.

Defined, §52-103.

No property rights if contraband, §52-415.

Lewdness.

Defined, §52-103.

Liens.

Expenses of abatement, §52-415.

Matter.

Defined, §52-103.

Motion picture films.

Defined, §52-103.

Immunity of projectionists, ushers or ticket takers, §52-416.

NUISANCES —Cont'd**Moral nuisances —Cont'd**

Motion picture projectionists, ushers or ticket takers.

Immunity, §52-416.

Obscene matters.

Defined, §52-103.

Orders.

Content of final order, §52-412.

Personal property.

Order restraining removal from premises, §52-404.

Violation of order contempt, §52-413.

Person.

Defined, §52-103.

Personal property.

Declared moral nuisance, §52-415.

Order restraining removal from premises, §52-404.

Property used in conducting and maintaining moral nuisance, §52-105.

Right to possession after hearing on temporary injunction, §52-406.

Place.

Defined, §52-103.

Pleadings, §52-403.**Prosecuting attorneys.**

Who may maintain action, §52-402.

Publications.

Defined, §52-103.

Real property.

Right to possession after hearing on temporary injunction, §52-406.

Remedies.

Cumulative remedy, §52-401.

Sales.

Defined, §52-103.

Severability of provisions, §52-417.

Types, §52-104.

Venue.

Actions to abate, §52-403.

Motion pictures.

Lewd films, §52-104.

Municipal corporations.

Abatement of nuisances.

Powers of cities, §50-334.

Notice.**Injunctions.**

When parties deemed to have knowledge of nuisance, §52-105.

Moral nuisances.

Hearing on temporary injunction, §52-405.

NUISANCES —Cont'd**Notice —Cont'd**

Private nuisances.

Abatement.

When notice required, §52-303.

Obscenity.

Lewd films, §52-104.

Orders.

Moral nuisances.

Actions to abate.

Content of final order, §52-412.

Personal property.

Order restraining removal from premises, §52-404.

Violation of order.

Contempt, §52-413.

Personal property.

Moral nuisances.

Order restraining removal from premises, §52-404.

Personal property declared moral nuisance, §52-415.

Property used in conducting and maintaining moral nuisance, §52-105.

Right to possession after hearing on temporary injunction, §52-406.

Public nuisances.

Conditions for repossession after finding of public nuisance, §52-407.

Right to possession after finding of public nuisance, §52-407.

Pleadings.

Moral nuisances.

Actions to abate, §52-403.

Prescriptions.

Public nuisance not legalized by prescription, §52-201.

Private nuisances.

Abatement.

Notice.

When required, §52-303.

Remedies for private nuisance, §52-301.

Actions.

Remedies for private nuisance, §52-301.

Defined, §52-107.

Notice.

Abatement.

When notice required, §52-303.

Remedies, §52-301.

Prosecuting attorney.

Moral nuisances.

Who may maintain action, §52-402.

NUISANCES —Cont'd**Prostitution.**

Admissions or findings of guilt.

Admissible to prove existence of nuisance, §52-409.

Public nuisances.

Abatement.

Private persons, §52-206.

Public bodies or officers, §52-205.

Remedies against public nuisance, §52-202.

Actions.

Private persons, §52-204.

Remedies against public nuisance, §52-202.

Defined, §52-102.

Indictments.

Remedies against public nuisance, §52-202.

Remedy by indictment regulated by penal code, §52-203.

Informations.

Remedies against public nuisance, §52-202.

Remedy by information regulated by penal code, §52-203.

Personal property.

Conditions for repossession after finding of public nuisance, §52-407.

Right to possession after finding of public nuisance, §52-407.

Prescriptions.

Public nuisance not legalized by prescription, §52-201.

Real property.

Conditions for reentry and repossession, §52-407.

Right to possession after finding of public nuisance, §52-407.

Remedies, §52-202.

Real property.

Public nuisances.

Conditions for reentry and repossession, §52-407.

Right to possession of real property after finding of public nuisance, §52-407.

Remedies, §52-202.

Moral nuisances, §52-401.

Private nuisances, §52-301.

Reputation.

Nuisances.

Actions to abate moral nuisances.

Evidence of reputation admissible, §52-410.

Rivers.

Obstructing free passage or use.

Definition of nuisance, §52-101.

NUISANCES —Cont'd**Severability of provisions.**

Provisions as to moral nuisances,
§52-417.

Statutes.

Acts done or maintained under
express authority of statute not
deemed nuisance, §52-108.

Venue.

Moral nuisances.

Actions to abate, §52-403.

Waters and watercourses.

Obstructing free passage or use.

Nuisance defined, §52-101.

**When acts not considered
nuisance, §52-108.****NURSES.****Professional service limited
liability companies (repealed
7/1/2010), §53-615.****O****OATHS.****Municipal corporations.**

City clerk.

Power to administer oaths,
§50-207.

Elections.

City clerk.

Power to administer oath,
§50-404.

Officers of elections.

City clerk to administer oath,
§§50-207, 50-452.

Election judge may administer
oaths, §50-456.

Mayor.

Power to administer oaths, §50-607.

Notaries public.

Forms, §51-109.

Power to administer oaths and
affirmations, §51-107.

Required, §51-105.

OCCUPATIONAL THERAPISTS.**Professional service limited
liability companies (repealed
7/1/2010), §53-615.****OPTOMETRISTS.****Professional service limited
liability companies (repealed
7/1/2010), §53-615.****ORDERS.****Nuisances.**

Moral nuisances.

Actions to abate.

Content of final order, §52-412.

ORDERS —Cont'd**Nuisances —Cont'd**

Moral nuisances —Cont'd

Personal property.

Order restraining removal from
premises, §52-404.

Violation of order.

Contempt, §52-413.

**Unincorporated nonprofit
associations.**

Effect of order against association,
§53-708.

ORDINANCES.**Local improvement districts.**

Creation of district, §50-1710.

Municipal ordinances.

General provisions, §§50-901 to
50-909.

**Publication, §§50-901, 50-901A,
50-906.**

Public utilities.

Underground conversion or extension
of utilities.

Creation of improvement district,
§50-2510.

Defined, §50-2502.

P**PARTIES.****Limited liability companies
(repealed 7/1/2010).**

Members as parties to actions,
§53-620.

Limited partnerships.

Derivative actions.

Proper plaintiff, §53-2-1003.

**PARTNERSHIPS, §§53-3-101 to
53-3-1205.**

**Accounting rights and duties,
§53-3-403.**

Act effective January 1, 2001.

New or existing partnerships
voluntarily electing applicability
before January 1, 2001,
§53-3-1204.

Actions.

By and against partnership,
§53-3-307.

Partnerships liability for partner's
actionable conduct, §53-3-305.

Advancements.

Mining partnerships.

Liability of purchaser for partners'
liens for advancements,
§53-407.

PARTNERSHIPS —Cont'd**Agency relationship.**

Partner agent of partnership,
§53-3-301.

Applicability of act.

Voluntary election before July 1,
2001, §53-3-1204.

Attorney general.

Actions, §53-3-1105.

Bankruptcy and insolvency.

Partnership as debtor, §53-3-307.

Code of conduct, §53-3-404.**Conflicts of law.**

Governing law, §53-3-106.
Supplemental principles of law,
§53-3-104.

Construction of act.

Applicability of act, §53-3-1204.
Governing law, §53-3-106.
Partnerships subject to governing,
§53-3-107.
Savings clause, §53-3-1205.
Severability, §53-3-1203.
Short title, §53-3-1202.
Supplemental principles of law,
§53-3-104.
Uniformity of application,
§53-3-1201.

Continuation of partnership.

Expiration of definite time or
particular undertaking,
§53-3-406.

Contracts.

Mining partnerships:
Members cannot bind partnership,
§53-409.
Recordation of contracts, §53-411.

Contribution.

Partner's liability, §53-3-306.

Conversions.

Definitions, §53-3-901.
Effect of, §53-3-904.
Idaho entity transactions act,
applicability, §53-3-901A.
Limited partnership to partnership,
§53-3-903.
Nonexclusiveness of provisions,
§53-3-908.
Partnership to limited partnership,
§53-3-902.
Unchanged entity, §53-3-904.

Death of partner.

Events causing partner's
disassociation, §53-3-601.

Debtor in bankruptcy, §53-3-101.**PARTNERSHIPS —Cont'd****Debtors and creditors.**

Mining partnerships.
Liability of purchaser for partners'
liens for debts and
advancements, §53-407.
Lien of creditors, §53-404.

Deceased partner.

Rights of legal representative,
§53-3-403.

Definitions, §53-3-101.

Conversions and mergers, §53-3-901.

Disassociation of partners.

Effect of, §53-3-603.
Events causing, §53-3-601.
Liability of reported partner,
§53-3-308.
Partnership business not wound up,
§§53-3-701 to 53-3-705.
Continued use of partnership
name, §53-3-705.
Disassociated partner's liability to
other persons, §53-3-703.
Disassociated partner's power to
bind partnership, §53-3-702.
Dissolution within 90 days after
disassociation, §53-3-701A.
Purchase of disassociated partner's
interest, §53-3-701.
Statement of disassociation,
§53-3-704.
Partner's rights, §53-3-405.
Wrongful disassociation, §53-3-602.

Dissolution and winding up,

§§53-3-801 to 53-3-807.
Continuation of partnership,
§53-3-802.
Disassociation when business not
wound up, §§53-3-701 to
53-3-705.
Events causing, §53-3-801.
Partner's liability to other partners
after dissolution, §53-3-806.
Partner's power to bind partnership
after dissolution, §53-3-804.
Partner's right to compel, §53-3-405.
Resumption of partnership business,
§53-3-802.
Right to wind up partnership
business, §53-3-803.
Settlement of accounts and
contributions among partners,
§53-3-807.
Statement of dissolution, §53-3-805.

Distribution.

Defined, §53-3-101.

PARTNERSHIPS —Cont'd**Distributions in kind**, §53-3-402.**Expulsion of partner.**

Partner's disassociation, §53-3-601.

Fees.

Schedule of fees, §53-3-105A.

Foreign limited liability**partnerships**, §§53-3-1101 to 53-3-1105.

Activities not constituting transacting business, §53-3-1104.

Defined, §53-3-101.

Failure to qualify.

Effect of, §53-3-1103.

Law governing, §53-3-1101.

Schedule of fees, §53-3-105A.

Statement of foreign qualification, §53-3-1102.

Foreign limited partnerships,

§§53-2-901 to 53-2-908.

Formation, §53-3-202.**Incapacity of partner.**

Events causing partner's disassociation, §53-3-601.

Injunctions.

Partnership action against partnership or another partner, §53-3-405.

Judgment against partnership.

Liability of partners, §53-3-307.

Judicial dissolution, §53-3-801.**Knowledge and notice**, §53-3-102.**Laws governing.**

Supplemental principles of law, §53-3-104.

Liability.

Mining partnerships.

Liability of purchaser for partners' liens for debts and advancements, §53-407.

Liens resulting from relation of partners, §53-408.

Liens.

Mining partnerships.

Liability of purchaser for liens resulting from relation of partners, §53-408.

Lien of partners and creditors, §53-404.

Partner's transferable interest, §53-3-504.

Limited liability companies.

Provisions repealed 7/1/2010, §§53-601 to 53-672.

Limited liability partnerships,

§§53-3-1001 to 53-3-1003A.

Annual report, §53-3-1003.

PARTNERSHIPS —Cont'd**Limited liability partnerships**

—Cont'd

Consolidated statement of authority and qualification, §53-3-1001A.

Defined, §53-3-101.

Foreign limited liability partnerships, §§53-3-1101 to 53-3-1105.

Registered agent.

Change of, §53-3-1001B.

Statement of qualification, §53-3-1001.

Revocation, §53-3-1003A.

Use of abbreviation or name, §53-3-1002.

Limited partnerships, §§53-2-101 to 53-2-1205.**Management of partnership,**

§53-3-401.

Mergers.

Definitions, §53-3-901.

Effect of, §53-3-906.

Idaho entity transactions act, applicability, §53-3-901A.

Nonexclusiveness of provisions, §53-3-908.

Plan of merger, §53-3-905.

Statement of merger, §53-3-907.

Mining partnerships.

Agreements.

Express agreement not necessary, §53-402.

Contracts.

Members cannot bind partnerships, §53-409.

Recording, §53-411.

Conveyances.

Sale of interest by partner, §53-406.

Debtors and creditors.

Liability of purchaser for partner's liens for debts, §53-407.

Lien of creditors, §53-404.

Liens.

Liability of purchaser for liens resulting from relation of partners to each other, §53-408.

Liability of purchaser for partners' liens for debts and advancements, §53-407.

Partners and creditors, §53-404.

Losses.

Sharing profits and losses, §53-403.

Majority of shares governs, §53-410.

Members cannot bind partnership, §53-409.

PARTNERSHIPS —Cont'd**Mining partnerships —Cont'd**

Notice.

Records constitute constructive notice, §53-412.

Number of persons required, §53-401.

Profits.

Sharing profits and losses, §53-403.

Property.

What constitutes partnership property, §53-405.

Recordation.

Contracts, §53-411.

Records.

Constructive notice, §53-412.

Relationship arises from ownership or shares or interest in mine, §53-402.

Sale of interest by partner, §53-406.

Shares.

Majority of shares governs, §53-410.

Sharing profits and losses, §53-403.

When mining partnership exists, §53-401.

Names.

Assumed business names, §§53-501 to 53-510.

New uniform act.

General provisions, §§53-3-101 to 53-3-1205.

New or existing partnerships voluntarily electing applicability before January 1, 2001, §53-3-1204.

Notice.

Mining partnerships.

Recording contracts constitutes constructive notice, §53-412.

Notification.

What constitutes, §53-3-102.

Partners.

Actions against partnership or another partner, §53-3-405.

Actions by and against partners, §53-3-307.

Charging orders.

Transferable interest subject to, §53-3-504.

Deceased partner.

Rights of legal representative, §53-3-403.

Disassociation generally, §§53-3-601 to 53-3-603.

General standards of conduct, §53-3-404.

Knowledge and notice.

What constitutes, §53-3-102.

PARTNERSHIPS —Cont'd**Partners —Cont'd**

Liability of purported partner, §53-3-308.

New partner admitted to existing partnership.

Partner's liability, §53-3-306.

Rights and duties, §53-3-401.

Books and records, §53-3-403.

Transferability of interest in partnership, §53-3-502.

Transfer of transferable interest, §53-3-503.

Wrongful disassociation, §53-3-602.

Partnership agreement.

Action against partner for breach, §53-3-405.

Defined, §53-3-101.

Effect of, §53-3-103.

Enforcement action against partnership or another partner, §53-3-405.

Nonwaivable provisions, §53-3-103.

Partnership as distinct entity, §53-3-201.

Partnership at will.

Defined, §53-3-101.

Dissolution, §53-3-801.

Partnership interests.

Defined, §53-3-101.

Partnership property, §§53-3-203, 53-3-204.

Co-ownership of partner, §53-3-501.

Defined, §53-3-101.

Transfer of, §53-3-302.

When partnership is partnership property, §53-3-204.

Partner's interests in the partnership.

Defined, §53-3-101.

Partner's liability, §53-3-306.

Liability of partnership, §53-3-305.

Pleadings.

New or existing partnerships voluntarily electing applicability before January 1, 2001, §53-3-1204.

Property.

Mine partnership property, §53-405.

Purported partner.

Liability of, §53-3-308.

Recordation.

Mining partnerships.

Contracts recorded, §53-411.

Records.

Mining partnerships.

Recording contracts constitutes constructive notice, §53-412.

PARTNERSHIPS —Cont'd

- Savings clause**, §53-3-1205.
- Schedule of fees**, §53-3-105A.
- Severability of act**, §53-3-1203.
- Short title**, §53-3-1202.
- Statement of denial**, §53-3-304.

Statements.

- Defined, §53-3-101.
- Execution, §53-3-303.
- Execution and filing, §53-3-105.
- Filing requirements, §53-3-302.

Stock and stockholders.

- Mining partnerships.
- Majority of shares governs, §53-410.

Title of act, §53-3-1202.**Uniform construction**, §53-3-1201.**Voluntary election of early applicability**, §53-3-1204.**Withdrawal of partner.**

- Partner's disassociation, §53-3-601.

Wrongful conduct of partner.

- Partner's disassociation, §53-3-601.

PERJURY.**Municipal irrigation systems.**

- Tax deeds.
- False swearing of affidavit, §50-1822.

PERSONAL PROPERTY.**Limited liability companies (repealed 7/1/2010).**

- Limited liability company interest, §53-635.

Limited partnerships.

- Transferable interests.
- Status as personal property, §53-2-701.

Municipal corporations.

- Powers of cities as to, §50-301.

Nuisances.

- Moral nuisances.
- Order restraining removal from premises, §52-404.
- Personal property declared moral nuisance, §52-415.
- Property used in conducting and maintaining moral nuisance, §52-105.

Public nuisances.

- Conditions for repossession after finding of public nuisance, §52-407.
- Right to possession after finding of public nuisance, §52-407.

Unincorporated nonprofit associations.

- Acquiring, holding, encumbering, etc., §§53-703, 53-704.

PERSONAL PROPERTY —Cont'd
Unincorporated nonprofit associations —Cont'd

- Disposition of inactive associations' personal property, §53-709.
- Transition concerning, §53-716.

PETITIONS.**Community infrastructure districts.**

- Creation of district, §50-3103.
- Special assessments, §50-3109.

Council-manager plan.

- Required signatures.
- Calculation for number of, §50-813.

Housing authorities.

- Creation of authorities, §50-1905.

Limited liability companies (repealed 7/1/2010).

- Execution and filing of articles or documents, §53-666.

Limited partnerships.

- Order for signature or unsigned filing of document, §53-2-205.

Local improvement districts.

- Creation of district, §50-1706.
- Fees, §50-1706A.

Public utilities.

- Underground conversion of utilities.
- Costs and feasibility study.
- Petition for, §50-2505.

PHOTOGRAPHS AND PHOTOGRAPHY.**City records.**

- Retention using photographic media, §50-909.

PHYSICAL THERAPY PRACTICE.**Professional service limited liability companies (repealed 7/1/2010), §53-615.****PHYSICIANS AND SURGEONS.****Limited liability companies.**

- Professional service limited liability companies (repealed 7/1/2010), §53-615.

Professional service limited liability companies (repealed 7/1/2010), §53-615.**PLATS AND MAPS.****Computerized mapping system.**

- Municipal corporations.
- Fees, §50-345.

Municipal corporations.

- Computerized mapping system.
- Fees, §50-345.
- Subdivisions, §§50-1301 to 50-1334.
- Subdivisions**, §§50-1301 to 50-1334.

PLEADINGS.**Limited partnerships.**

Derivative actions, §53-2-1004.

Nuisances.

Moral nuisances.

Actions to abate, §52-403.

PODIATRISTS.**Professional service limited liability companies (repealed 7/1/2010), §53-615.****POLICEMEN'S RETIREMENT FUND, §§50-1501 to 50-1526.****Actions.**

Board of commissioners.

Actions by and against board, §50-1508.

Actuarial study.

Mandatory actuarial study, §50-1525.

Applicability of provisions, §50-1521.**Appropriations, §50-1506.****Assignments.**

Benefits.

Prohibited, §50-1517.

Audits.

Claims against fund, §50-1511.

Benefits, §50-1514.

Death benefits, §50-1516.

Disability retirement, §50-1516.

Exemption from legal process, §50-1517.

Funeral benefits, §50-1516.

Retirement benefits, §50-1514.

Board of commissioners.

Actions by and against board, §50-1508.

Administration of fund, §50-1507.

Chairman, §50-1513.

Composition, §50-1504.

Duties, §50-1504.

Election of members, §50-1504.

Employees, §50-1509.

Liability, §50-1510.

Liability.

Personal liability of members or employees, §50-1510.

Secretary.

Reports, §50-1513.

Claims against fund.

Audit, §50-1511.

False claims, §§50-1523, 50-1526.

Composition, §50-1505.**Construction and interpretation.**

Liberal construction of provisions, §50-1518.

Creation, §50-1505.

Actuarial study.

Required, §50-1525.

POLICEMEN'S RETIREMENT FUND —Cont'd**Death.**

Benefits, §50-1516.

Funeral benefits, §50-1516.

Definitions, §50-1502.**Disability retirement, §50-1516.****Establishment, §50-1503.****Executions.**

Exemption of benefits, §50-1517.

False claims, §§50-1523, 50-1526.**Insurance.**

Power of board of commissioners to insure risks, §50-1520.

Leaves of absence, §50-1514.

Defined, §50-1502.

Legislative declaration, §50-1501.**Liability.**

Personal liability of board members or their employees, §50-1510.

Reports.

Secretary of board, §50-1513.

Resignation of policemen.

Salary deductions.

Refund of deductions, §50-1515.

Rotary expense fund, §50-1519.**Salary deductions, §50-1512.**

Resignation of policemen.

Refund of deductions, §50-1515.

Severability of provisions, §50-1522.**Taxation.**

Levy by city, §50-1512.

Termination of authority to create fund, §50-1524.**POLITICAL SUBDIVISIONS.****Municipal corporations.**

General provisions, §§50-101 to 50-2723.

POPULAR NAMES AND SHORT TITLES.**Assumed business names act of 1997, §§53-501 to 53-510.****City property tax alternatives act of 1978, §§50-1043 to 50-1049.****Community infrastructure district act, §§50-3101 to 50-3121.****Housing authorities and cooperation law, §§50-1901 to 50-1927.****Limited partnership act, §§53-2-101 to 53-2-1205.****Local economic development act, §§50-2901 to 50-2912.****Local improvement district code, §§50-1701 to 50-1772.****Municipal election laws, §§50-401 to 50-477.**

POPULAR NAMES AND SHORT TITLES —Cont'd

Notary public act, §§51-101 to 51-123.

Partnership act (1996), §§53-3-101 to 53-3-1205.

Revenue bond act.

Municipal corporations, §§50-1027 to 50-1042.

Underground conversion of utilities, §§50-2501 to 50-2523.

Uniform limited partnership act, §§53-2-101 to 53-2-1205.

Uniform partnership act (1996), §§53-3-101 to 53-3-1205.

Uniform unincorporated nonprofit association act, §§53-701 to 53-717.

Unincorporated nonprofit association act, §§53-701 to 53-717.

Urban renewal law of 1965, §§50-2001 to 50-2032.

POWER OF ATTORNEY.

Limited liability companies (repealed 7/1/2010).

Execution of documents, §53-610.

Limited partnerships.

Signing of records, §§53-2-204, 53-2-205.

PRIORITIES.

Limited partnerships.

Disposition of assets at dissolution, §53-2-812.

PRIVATE NUISANCES, §§52-301 to 52-303.

PROFESSIONAL SERVICE LIMITED LIABILITY COMPANIES (REPEALED 7/1/2010), §53-615.

PROFESSIONS, VOCATIONS AND BUSINESSES.

Municipal corporations.

Power to license and regulate, §50-307.

PROFITS.

Limited liability companies (repealed 7/1/2010).

Sharing of profits, §53-628.

PROSECUTING ATTORNEYS.

Nuisances.

Moral nuisances.

Who may maintain action, §52-402.

PROSTITUTION.

Nuisances.

Admissions or findings of guilt.

Admissible to prove existence of nuisance, §52-409.

PSYCHOLOGISTS.

Professional service limited liability companies (repealed 7/1/2010), §53-615.

PUBLICATION.

Elections.

Notice.

Municipal elections, §50-436.

Notice of candidate filing deadline, §50-435.

Sample ballot.

Municipal elections, §50-440.

Local improvement districts.

Proceedings generally, §50-1727.

Municipal corporations.

City code.

Publication in book or pamphlet form, §50-906.

Elections.

Notice, §50-436.

Candidate filing deadline, §50-435.

Sample ballot, §50-440.

Financial statements, §50-1011.

Industrial development program.

Revenue bond proceedings, §50-2718.

Ordinances, §50-901.

City code.

Publication in book or pamphlet form, §50-906.

Summary of ordinances, §50-901A.

Ordinances, §§50-901, 50-901A, 50-906.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

Policemen's retirement fund, §§50-1501 to 50-1526.

PUBLIC NUISANCES, §§52-201 to 52-206.

PUBLIC OFFICERS AND EMPLOYEES.

Civil service.

Municipal corporations, §§50-1601 to 50-1610.

Mayor.

Municipal corporations, §§50-601 to 50-612.

Municipal corporations.

Civil service, §§50-1601 to 50-1610.

PUBLIC UTILITIES.**Actions.**

- Underground conversion of utilities.
- Incorporation of certain provisions by reference, §50-2514.

Community infrastructure districts.

- Exemptions and exclusions from provisions, §50-3117.

Counties.

- Underground conversion of utilities.
- General provisions, §§50-2501 to 50-2523.

Definitions.

- Underground conversion of utilities, §50-2502.

Jurisdiction.

- Underground conversion of utilities.
- Effect of provisions on jurisdiction, §50-2520.

Limitation of actions.

- Underground conversion of utilities, §50-2514.

Local improvement districts.

- Changes in area, §50-2510.
- Ordinance creating, §50-2510.

Municipal corporations.

- Underground conversion of utilities.
- General provisions, §§50-2501 to 50-2523.

Notice.

- Underground conversion of utilities.
- Assessments, §50-2512.
- Resolution declaring intention to create district and hearing on protest, §50-2508.

Ordinances.

- Underground conversion of utilities.
- Creation of improvement district, §50-2510.
- Defined, §50-2502.

Petitions.

- Underground conversion of utilities.
- Costs and feasibility study.
- Petition for, §50-2505.

Underground conversion or extension of utilities, §§50-2501 to 50-2523.

- Abatement of construction, §50-2523.

Actions.

- Incorporation of certain provisions by reference, §50-2514.

Assessments.

- Basis of assessments, §50-2504.
- Incorporation of certain provisions by reference, §50-2513.

Notice.

- Hearing on objections, §50-2512.

PUBLIC UTILITIES —Cont'd**Underground conversion or extension of utilities —Cont'd****Assessments —Cont'd****Objections.****Hearing.**

- Notice, §50-2512.

- Reassessment of benefits, §50-2521.

Citation of law.

- Short title, §50-2501.

- Construction of converted facilities, §50-2516.

- Construction of extended facilities, §50-2516.

Costs, §50-2515.

- Costs and feasibility study, §50-2505.

- Basis for assessments, §50-2504.

- Report, §50-2506.

- Payment of conversion costs to public utility, §50-2518.

- Report, §50-2506.

Definitions, §50-2502.**Governing bodies.**

- Defined, §50-2502.

- Powers, §50-2503.

Jurisdiction.

- Effect of provisions, §50-2520.

Limitation of actions, §50-2514.**Local improvement districts.**

- Changes in area, §50-2510.

Creation.

- Ordinance creating, §50-2510.

Notice.**Assessments.**

- Hearing on objections, §50-2512.

- Resolution declaring intention to create district and hearing on protest, §50-2508.

Ordinances.

- Creation of improvement district, §50-2510.

- Defined, §50-2502.

Protest.

- Filing, §50-2509.

- Failure to file as waiver of objection, §50-2511.

- Hearing on, §50-2509.

- Notice, §50-2508.

Public utilities commission.**Jurisdiction.**

- No limitation, §50-2520.

Reinstallation of overhead facilities.

- Prohibited, §50-2519.

Resolutions.

- Costs and feasibility study.

- Resolution for, §50-2505.

PUBLIC UTILITIES —Cont'd**Underground conversion or extension of utilities —Cont'd****Resolutions —Cont'd**

Intention to create district,
§50-2507.

Notice of resolution, §50-2508.

Service connections, §50-2517.

Severability of provisions, §50-2522.

Title of act.

Short title, §50-2501.

Title to converted facilities, §50-2516.

Title to extended facilities, §50-2516.

R**RAILROADS.****Local improvement districts.**

Assessments.

Improvements to streets occupied
by tracks, §50-1704.

Municipal corporations.

Power to regulate public carriers,
§50-306.

REAL PROPERTY.**Housing authorities.**

Defined for purposes of, §50-1903.

Powers as to, §50-1904.

Municipal corporations.

Conveyances of property by
municipalities, §§50-1401 to
50-1409.

Nuisances.

Public nuisances.

Conditions for reentry and
repossession, §52-407.

Right to possession of real property
after finding of public
nuisance, §52-407.

Subdivisions generally, §§50-1301 to
50-1334, 50-2001 to 50-2032.

Unincorporated nonprofit associations.

Acquiring, holding, encumbering,
etc., §§53-703, 53-704.

Statement of authority, §53-705.

Transition concerning, §53-716.

RECEIVERS.**Housing authorities.**

Remedies of obligees of authority.

Additional remedies conferrable by
authority, §50-1925.

Limited partnerships.

Transferable interests.

Creditor's rights, §53-2-703.

RECORDATION.**Municipal corporations.**

Subdivisions.

Effect of recording plats, §50-1312.

Existing plats validated, §50-1315.

Vacation to be recorded, §50-1324.

Partnerships.

Mining partnerships.

Contracts recorded, §53-411.

Unincorporated nonprofit associations.

Statement of authority as to real
property, §53-705.

RECORDS.**Limited liability companies**

(repealed 7/1/2010), §53-625.

Limited partnerships.

Correcting of filed records, §53-2-207.

Delivery to and filing by secretary of
state, §53-2-204.

General partners.

Right to information, §53-2-407.

Information to be kept at designated
office, §53-2-111.

Liability for false information,
§53-2-208.

Limited partners.

Right to inspect and request
information, §53-2-304.

Signing of records, §§53-2-204,
53-2-205.

Partnerships.

Mining partnerships.

Recording contracts constitutes
constructive notice, §53-412.

RECREATION.**Municipal corporations.**

Facilities.

Powers as to, §50-303.

Taxation.

Special tax for recreational
purposes, §50-303.

REGISTRATION.**Foreign limited liability companies (repealed 7/1/2010), §53-651.**

Amendment, §53-654.

Cancellation, §53-655.

Administrative cancellation,
§§53-655A to 53-655C.

Issuance, §53-652.

Name requirement, §53-653.

Transacting business without
registration, §53-656.

Limited liability companies (repealed 7/1/2010).

Foreign limited liability companies,
§53-651.

Amendment, §53-654.

REGISTRATION —Cont'd**Limited liability companies**

(repealed 7/1/2010) —Cont'd

Foreign limited liability companies
—Cont'd

Cancellation, §53-655.

Administrative cancellation,

§§53-655A to 53-655C.

Issuance, §53-652.

Name requirement, §53-653.

Transacting business without
registration, §53-656.**REORGANIZATION OF CITIES
ORGANIZED UNDER****GENERAL LAWS, §§50-2301 to
50-2308.****REPORTS.****Housing authorities.**

Annual report, §50-1921.

**Limited liability companies
(repealed 7/1/2010).**

Annual report, §53-613.

Limited partnerships.Annual report to secretary of state,
§53-2-210.**Partnerships.**

Limited liability partnerships.

Annual report, §53-3-1003.

Limited partnerships.

Annual report to secretary of state,
§53-2-210.**Policemen's retirement fund.**

Secretary of board, §50-1513.

RESORTS TAXATION.**Property tax alternatives for resort
cities, §§50-1043 to 50-1049.****RETIREMENT.****Funds.**Policemen's retirement fund,
§§50-1501 to 50-1526.**Municipal corporations.**

City retirement and pension plan.

Adoption authorized, §50-1016.

Deductions from wages for,
§50-1016.**Policemen's retirement fund,**

§§50-1501 to 50-1526.

REVENUE ALLOCATION AREAS.**Local economic development,**

§§50-2904, 50-2907.

RIGHTS OF WAY.**Municipal corporations.**

Subdivisions.

Public right-of-way, §50-1315.

Defined, §50-1301.

RIGHTS OF WAY —Cont'd**Municipal corporations —Cont'd**

Subdivisions —Cont'd

Public right-of-way —Cont'd

Jurisdiction within highway
district, §50-1330.**RIOTS.****Municipal corporations.**Power to prevent and restrain,
§50-308.**RIVERS.****Nuisances.**

Obstructing free passage or use.

Definition of nuisance, §52-101.

RULES AND REGULATIONS.**Local improvement districts.**

Local improvement guarantee fund.

Maintenance and operation of
fund, §50-1765.**Municipal corporations.**

Civil service commission, §50-1603.

Subdivisions.

Sanitary restrictions.

Administration and enforcement,
§50-1328.**S****SALARIES.****Policemen's retirement fund.**

Salary deductions, §50-1512.

Resignation of policemen.

Refund of deductions, §50-1515.

SALES.**Judicial sales.**

Housing authorities.

Exemption of property of authority,
§50-1922.**SEALS AND SEALED****INSTRUMENTS.****Housing authorities.**Power to have and alter seal,
§50-1904.**Municipal corporations.**Power to have and alter common
seal, §50-301.**Notaries public, §51-106.**Stealing or wrongfully possessing
seal.

Felony, §51-119.

SECRETARY OF STATE.**Foreign limited liability company
registration (repealed 7/1/2010),
§53-651.**Administrative cancellation of
registration, §§53-655A to
53-655C.

SECRETARY OF STATE —Cont'd**Foreign limited liability company registration (repealed 7/1/2010) —Cont'd**

Application for cancellation delivered to secretary, §53-655.

Issuance by secretary, §53-652.

Notice of amendment filed with secretary, §53-654.

Limited liability companies (repealed 7/1/2010).

Administrative dissolution, §§53-643A to 53-643C.

Annual report.

Delivery to secretary, §53-613.

Articles of dissolution.

Filing with secretary, §53-647.

Articles of merger or consolidation.

Delivery and filing with secretary, §53-663.

Articles of organization.

Filing with secretary, §53-611.

Amendment or restatement, §53-609.

Filing, service and copying fee, §53-665.

Reservation of name.

Filing application with secretary, §53-603.

Limited partnerships.

Administrative dissolution, §53-2-809.

Reinstatement following, §53-2-810.

Appeal of denial, §53-2-811.

Annual report to secretary of state, §53-2-210.

Foreign limited partnerships.

Certificate of authority, §53-2-904.

Notice of revocation, §53-2-906.

Records, delivery to and filing by secretary of state, §53-2-204.

Notaries public.

Appointment, §51-103.

Cancellation of commission of notary, §51-114.

Cancellation of notary's bond.

Notice filed with secretary, §51-114.

Submittal of application to, §51-105.

Unincorporated nonprofit associations.

Appointment of agent to receive service of process.

Filing with secretary, §53-710.

SERVICE OF PROCESS.**Limited partnerships.**

Administrative dissolution.

Appeal of denial of reinstatement, §53-2-811.

Conversion and merger.

Foreign organization that is converted.

Consent to jurisdiction, §53-2-1105.

Foreign organization that is survivor of merger.

Consent to jurisdiction, §53-2-1109.

Municipal corporations.

Corporations.

Prosecutions under city ordinances, §50-215.

Officers on whom served, §50-201.

Partnerships.

Merger of partnership entities, §53-3-906.

Unincorporated nonprofit associations.

Appointment of agent to receive, §53-710.

SETOFFS.**Limited partnerships.**

Distributions.

Offsets for amounts owed to partnership, §53-2-507.

SEWERS.**Municipal corporations.**

Bond issues.

City coupon bonds.

Issuance to acquire sewerage systems, §50-1020.

Joint services, §§50-1022 to 50-1025.

Revenue bonds.

Bond anticipation notes, §50-1036.

Conditions, §§50-1036, 50-1037.

Definitions, §50-1029.

Election prior to incurring debt, §50-1035.

Expenses may be incurred before issuance, §50-1034.

Form, §50-1036.

Interest.

Issuance of bonds at rates exceeding original specifications, §50-1035A.

Liability.

City not liable, §50-1040.

SEWERS —Cont'd**Municipal corporations —Cont'd**

Bond issues —Cont'd

Revenue bonds —Cont'd

Lien, §50-1039.

Management and care of work,
§50-1028.Ordinance prior to construction,
§50-1035.Powers of city as to works,
§50-1030.

Projects.

Revenues used to pay bond,
§50-1033.Self supporting project,
§50-1032.

Supervision, §50-1031.

Use of project, §50-1033.

Revenues of projects to pay
bonds, §50-1033.

Short title, §50-1025.

Special obligation nature of
bond, §50-1040.

Taxation.

Exemptions from taxation,
§50-1042.Levy to pay bonds prohibited,
§50-1041.

Terms, §50-1037.

Validity, §50-1038.

Definitions, §50-1029.

Improvements.

Powers of cities, §50-315.

Management and care of system,
§50-1028.Powers as to sewers and drains,
§§50-332, 50-1030.

Projects.

Election prior to incurring debt,
§50-1035.

Expenses.

Payment of preliminary
expenses, §50-1034.Ordinances prior to construction,
§50-1035.

Revenues, §50-1033.

Self supporting projects required,
§50-1032.

Supervision, §50-1031.

Use, §50-1033.

Subdivisions.

Plans and specifications of water
and sewage systems.Submission to department of
environmental quality,
§§50-1326, 50-1329.**SIDEWALKS.****Local improvement districts.**Powers of governing bodies of
municipalities as to, §50-1703.**Municipal corporations.**

Obstructions.

Removal.

Powers of cities, §50-314.

Powers of cities generally, §§50-316,
50-317.

Rubbish.

Removal.

Powers of cities, §50-317.

Snow and ice.

Removal.

Powers of cities, §50-317.

SIGNATURES.**Limited partnerships.**Records filed with secretary,
§§53-2-204, 53-2-205.**Notaries public.**Powers to certify affixation of
signature by mark or to sign for
person physically unable to,
§51-107.**SLUMS.****Housing authorities.**General provisions, §§50-1901 to
50-1927.**Urban renewal.**General provisions, §§50-2001 to
50-2032.**SOCIAL WORKERS.****Professional service limited
liability companies (repealed
7/1/2010), §53-615.****SOLID WASTE.****Collection systems.**

Municipal corporations.

Authority to maintain and operate,
§50-344.**Municipal corporations.**

Collection systems.

Authority to maintain and operate,
§50-344.Solid waste collection systems,
§50-344.**STANDING.****Unincorporated nonprofit
associations.**Capacity to assert and defend,
§53-707.**STATUTE OF LIMITATIONS.****Limited liability companies
(repealed 7/1/2010).**Claims against dissolved companies,
§53-648.

STATUTE OF LIMITATIONS

—Cont'd

Limited partnerships.

Dissolution, claims not known at time of, §53-2-807.

Improper distributions, §53-2-509.

Local economic development.

Contest of legality of ordinance, resolution or proceedings or bonds authorized, §50-2911.

Municipal corporations.

Irrigation systems.

Actions to quiet title against or test validity of assessment, §50-1829.

Subdivisions.

Vacation.

Actions to establish adverse rights or question validity of vacation, §50-1323.

Urban renewal.

Contest of legality of ordinance, resolution or proceedings or bonds, §50-2027.

Public utilities.

Underground conversion of utilities, §50-2514.

STATUTES.**Nuisances.**

Acts done or maintained under express authority of statute not deemed nuisance, §52-108.

STOCK AND STOCKHOLDERS.**Partnerships.**

Mining partnerships.

Majority of shares governs, §53-410.

STREETS.**Abandonment.**

Municipal corporations.

Vacation of streets, avenues, etc., §50-311.

Local improvement districts.

Defined, §50-1702.

Improvements on one side of street, §50-1704.

Powers of governing bodies of municipalities as to, §50-1703.

Railroads.

Improvements on street occupied by tracks, §50-1704.

Municipal corporations.

Creation of streets, §50-311.

Dedication of streets and alleys.

Subdivisions, §50-1309.

Eminent domain, §50-311.

STREETS —Cont'd**Municipal corporations —Cont'd**

Improvements.

Powers as to, §§50-312, 50-315.

Taxation.

Special levy, §50-312.

Jurisdiction.

Public streets within highway district, §50-1330.

Local improvement districts, §§50-1702 to 50-1704.

Naming of streets, §50-318.

Numbering of houses, §50-318.

Private roads.

Dedication to public.

Subdivisions, §50-1309.

Regulation and supervision.

Powers as to, §§50-313, 50-314.

Utility transmission systems.

Power of city to regulate, §50-328.

Vacation of streets, §50-311.

Plats or parts of plats of subdivisions, §50-1306A.

Reversion of vacated streets, §50-311.

Vacation.

Municipal corporations.

Vacation of streets, avenues, etc., §50-311.

SUBDIVISIONS, §§50-1301 to 50-1334, 50-2001 to 50-2032.**Acknowledging plats.**

Effect, §50-1312.

Appeals.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation, §50-1322.

Dedication of streets and alleys,

§50-1309.

Acceptance of dedication required, §50-1313.

Private roads to public, §50-1309.

Deed in fee simple.

Effect of acknowledging and recording plat, §50-1312.

Definitions, §50-1301.**Easements.**

Defined, §50-1301.

Vacation, §50-1325.

Vacation of subdivision easements, §50-1325.

Public utility easements, §50-1325.

Essentials of plats, §50-1304.**Extraterritorial effects, §50-1306.****Fees.**

Plats.

Verification, §50-1305.

SUBDIVISIONS —Cont'd**Interior monuments.**

Marking after recording of plat,
§50-1332.

Private roads, §50-1309.

Public streets within highway
district, §50-1330.

Setting, §50-1331.

Misdemeanors.

Sanitary districts, §50-1329.

Water systems encompassed by plats.
Certification.

Failure to comply with section,
§50-1334.

Monuments.

Interior monuments.

Marking after recording of plat,
§50-1332.

Setting, §50-1331.

Recording of plats with only exterior
monuments referenced,
§50-1333.

Notice.

Sanitary restrictions.

Reimposition, §50-1326.

Vacation.

Hearing, §50-1306A.

Unincorporated areas and cities
not exercising their
corporate functions,
§50-1317.

Owner.

Defined, §50-1301.

Duties, §50-1302.

Penalties.

Selling unplatted lots, §50-1316.

Petitions.

Vacation, §50-1306A.

Unincorporated areas and cities
not exercising their corporate
functions, §50-1317.

Plats.

Approval, §50-1308.

Certification, §50-1309.

Defined, §50-1301.

Distinctiveness.

Designation of townsite and
addition, §50-1307.

Effect of acknowledging and
recording plat, §50-1312.

Enforcement of requirement of plat,
§50-1314.

Existing plats validated, §50-1315.

Filing, §50-1310.

Nonconforming map or plat.

Prohibited, §50-1327.

Nonconforming map or plat.

Filing or recording prohibited,
§50-1327.

SUBDIVISIONS —Cont'd**Plats —Cont'd**

Records, §50-1310.

Indexing of plat records, §50-1311.

Recording plats.

Effect, §50-1312.

Existing plats validated,
§50-1315.

Required, §50-1302.

Requisites, §50-1304.

Sanitary restrictions.

Requirements, §50-1326.

Selling unplatted lots.

Penalty, §50-1316.

Submission to planning commission,
§50-1308.

Vacation of plats.

Adverse rights.

Limitation of actions to
establish, §50-1323.

Appeals, §§50-1320, 50-1322.

Cemetery plats, §50-1306A.

Consent required, §50-1321.

Easements, §50-1325.

Limitation of actions to establish
adverse rights or question
validity of vacation, §50-1323.

Procedure, §50-1306A.

Recordation, §50-1324.

Streets, §50-1306A.

Appeals, §50-1322.

Cities not exercising corporate
functions, §§50-1317 to
50-1319.

Consent required, §50-1321.

Unincorporated areas, §§50-1317
to 50-1319.

Title.

Vesting upon vacation, §50-1320.

Validity of vacation.

Limitation of actions on question
of, §50-1323.

Validation of existing plats, §50-1315.

Verification, §50-1305.

Water systems encompassed by plats.

Review of, §50-1334.

Private road.

Dedication to public, §50-1309.

Defined, §50-1301.

Jurisdiction over, §50-1309.

Public highway agency.

Defined, §50-1301.

Public land survey corners.

Defined, §50-1301.

Public right of way.

Defined, §50-1301.

Jurisdiction within highway district,
§50-1330.

SUBDIVISIONS —Cont'd**Public right of way —Cont'd**

Public street never laid out and constructed to standards of appropriate highway agency, §50-1315.

Public street defined, §50-1301.**Recording plats.**

Effect, §50-1312.

Existing plats validated, §50-1315.

Records.

Plats, §50-1310.

Indexing of plat records, §50-1311.

Vacation, §50-1324.

Rules and regulations.

Sanitary restrictions.

Administration and enforcement, §50-1328.

Sanitary restrictions, §50-1326.

Appeals.

Reimposition, §50-1326.

Defined, §50-1301.

Noncomplying map or plat.

Filing or recording prohibited, §50-1327.

Notice.

Reimposition, §50-1326.

Plats to bear, §50-1326.

Reimposition, §50-1326.

Removal, §50-1326.

Reimposition, §50-1326.

Rules for administration and enforcement, §50-1328.

Violations, §50-1329.

Sewers.

Plans and specifications of water and sewage systems.

Submission to department of environmental quality, §§50-1326, 50-1329.

Streets.

Adjoining owners.

Consent required for vacation, §50-1321.

Dedication of streets and alleys, §50-1309.

Dedication must be accepted, §50-1313.

Defined, §50-1301.

Jurisdiction of public streets in highway district, §50-1330.

Public streets defined, §50-1301.

Survey, §50-1303.

Monuments, §50-1303.

Required, §50-1302.

Verification of plats, §50-1305.

Vacation.

Adjoining owners.

Consent required, §50-1321.

SUBDIVISIONS —Cont'd**Vacation —Cont'd**

Appeal from order granting or denying, §50-1322.

Cemeteries.

All or portion of cemetery plats, §50-1306A.

Easements, §§50-1306A, 50-1325.

Limitation of actions to establish adverse rights or question validity of vacation, §50-1323.

Notice.

Hearing, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §50-1317.

Petitions, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §50-1317.

Plats.

Cemetery plats, §50-1306A.

Easements.

Public utility easements, §50-1306A.

Notice.

Exception for public utility easements, §50-1306A.

Public utility easements, §50-1306A.

Streets, §50-1306A.

Procedure, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions, §§50-1317 to 50-1319.

Streets.

All or portion of plats of streets, §50-1306A.

Unincorporated areas and cities not exercising their corporate functions.

Notice.

Hearing, §50-1317.

Opposition.

Grant of petition in absence of opposition, §50-1318.

Procedure in presence of opposition, §50-1319.

Petitions, §50-1317.

Vesting of title on vacation, §50-1320.

Water supply and waterworks.

Plans and specifications of water and sewage systems.

Submission to department of environmental quality, §§50-1326, 50-1329.

SUBDIVISIONS —Cont'd**Water supply and waterworks**

—Cont'd

Water systems encompassed by plats.

Certification, §50-1334.

Failure to comply with section,
§50-1334.**SUBPOENAS.****Housing authorities.**

Powers of authorities, §50-1904.

SURVEYS AND SURVEYORS.**Municipal corporations.**Subdivisions, §§50-1302, 50-1303,
50-1305.

Urban renewal.

Powers of urban renewal agency,
§50-2007.**Professional service limited
liability companies (repealed
7/1/2010), §53-615.****Subdivisions.**Municipal corporations, §§50-1302,
50-1303, 50-1305.**T****TAXATION.****Hotels.**

Occupancy tax, §50-1046.

Housing authorities.

Exemptions, §50-1908.

Payments in lieu of taxes, §50-1908.

Local improvement districts.

Local improvement guarantee fund.

Creation of fund.

Levy of tax, §50-1762.

Market value.

Municipal corporations.

Aviation facilities, acquisition and
maintenance, §50-321.Cemeteries, acquisition and
maintenance, §50-320.Local improvement guarantee
fund, §50-1762.Replenishment of fund,
§50-1766.Tax levy for general and special
purposes, §50-235.Tax levy for recreation and cultural
facilities, §50-303.**Policemen's retirement fund.**

Levy by city, §50-1512.

THEATER.**Municipal corporations.**Power to license and regulate,
§50-308.**TORTS.****Limited liability companies
(repealed 7/1/2010).**Liability of members to third parties,
§53-619.**Unincorporated nonprofit
associations.**

Liability in tort, §53-706.

TRUSTS AND TRUSTEES.**Unincorporated nonprofit
associations.**

Beneficiary of trust, §53-704.

U**UNDERGROUND CONVERSION
OF UTILITIES.**General provisions, §§50-2501 to
50-2523.**UNIFORM LAWS.**Limited partnership act, §§53-2-101
to 53-2-1205.

Partnership, §§53-3-101 to 53-3-1205.

Unincorporated nonprofit
associations, §§53-701 to 53-717.**UNINCORPORATED NONPROFIT
ASSOCIATIONS, §53-701 to
53-717.****Abatement of claim.**Change of members or officers,
§53-711.**Actions.**Capacity to assert and defend,
§53-707.Claim not abated by change of
members or officers, §53-711.Residency of association for purposes
of venue, §53-712.**Agent to receive service of process.**

Appointment, §53-710.

Alternative dispute resolution.Capacity to assert and defend,
§53-707.**Arbitration.**Capacity to assert and defend,
§53-707.Beneficiary of trust or contract,
§53-704.Capacity to assert and defend,
§53-707.**Change of members or officers.**

Claim not abated, §53-711.

Claim not abated by change of
members or officers, §53-711.Claims against association by
members, §53-706.

UNINCORPORATED NONPROFIT ASSOCIATIONS —Cont'd

- Claims against members by association, §53-706.**
- Contract liability, §53-706.**
- Deeds.**
 - Statement of authority as to real property executed as deed, §53-705.
- Definitions, §53-701.**
- Devisee, §53-704.**
- Disposition of personal property of inactive association, §53-709.**
- Effect of chapter upon other laws, §53-715.**
- Inactive associations' personal property disposition, §53-709.**
- Judgments.**
 - Effect of judgment against association, §53-708.
- Legatee, §53-704.**
- Liability in contract and tort, §53-706.**
- Members.**
 - Contract and tort liability, §53-706.
 - Effect of judgment or order against association, §53-708.
- Orders.**
 - Effect of order against association, §53-708.
- Personal property acquired, held, etc., by association, §§53-703, 53-704.**
 - Transition concerning, §53-716.
- Personal property of inactive association.**
 - Disposition, §53-709.
- Real property acquired, held, etc., by association, §§53-703, 53-704.**
 - Statement of authority as to property, §53-705.
 - Transition concerning, §53-716.
- Recordation.**
 - Statement of authority as to real property, §53-705.
- Savings clause, §53-717.**
- Secretary of state.**
 - Appointment of agent to receive service of process.
 - Filing with secretary, §53-710.
- Service of process.**
 - Appointment of agent to receive, §53-710.
- Short title.**
 - Uniform unincorporated nonprofit association act, §53-714.
- Standing.**
 - Capacity to assert and defend, §53-707.

UNINCORPORATED NONPROFIT ASSOCIATIONS —Cont'd

- Statement of authority as to real property, §53-705.**
- Supplementary general principles of law and equity, §53-702.**
- Territorial application of chapter, §53-703.**
- Tort liability, §53-706.**
- Transition concerning real and personal property, §53-716.**
- Uniformity of application and construction, §53-713.**
- Venue.**
 - Residency of association for purposes of venue, §53-712.
- UNITED STATES.**
- Housing authorities.**
 - Federal government.
 - Aid from, §50-1923.
 - Defined, §50-1903.
- URBAN RENEWAL.**
- General provisions, §§50-2001 to 50-2032.**
- UTILITIES.**
- Underground conversion or extension of utilities, §§50-2501 to 50-2523.**

V

VAGRANCY.

- Arrest.**
 - Municipal corporations.
 - Power to arrest vagrants, §50-308.

VENUE.

- Nuisances.**
 - Moral nuisances.
 - Actions to abate, §52-403.
- Unincorporated nonprofit associations.**
 - Residency of association for purposes of venue, §53-712.

VETERINARIANS.

- Professional service limited liability companies (repealed 7/1/2010), §53-615.**

VETO.

- Municipal corporations.**
 - Mayor.
 - Power of veto, §50-611.

VOTER REGISTRATION.

- Municipal elections, §50-414.**
 - Challenges to entries in election record and poll book, §50-427.

VOTER REGISTRATION —Cont'd**Municipal elections —Cont'd**

Death.

Removal of name from election register, §50-427.

Election record and poll book, §§50-428, 50-452.

Challenges to entries in, §50-427.

Comparison of poll lists and ballots, §50-464.

Signing by election board judges, §50-452.

Signing by electors, §50-458.

Transmission to city clerk after counting of votes, §50-466.

W**WARRANTS FOR PAYMENT OF MONEY.****Municipal corporations.**

Special tax assessment.

Warrant redemption fund, §50-1004.

WATERS OF THE STATE.**Municipal corporations.**

Cities situated on navigable lakes and streams.

Extension of boundaries into waters, §50-221.

Powers as to, §50-331.

Nuisances.

Obstructing free passage or use.

Nuisance defined, §52-101.

WATER SUPPLY AND WATERWORKS.**Municipal corporations.**

Bond issues.

Joint services, §§50-1022 to 50-1025.

Revenue bonds, §§50-1027 to 50-1042.

Domestic water systems.

Defined, §50-323.

Powers as to, §50-323.

Expenses.

Payment of preliminary expenses, §50-1034.

Joint water systems, §50-324.

Lease or sale of water plants.

Procedure, §50-326.

Management and care of waterworks, §50-1028.

WATER SUPPLY AND**WATERWORKS —Cont'd****Municipal corporations —Cont'd**

Ordinances prior to construction, §50-1035.

Powers of city as to, §50-1030.

Projects.

Elections prior to incurring debt, §50-1035.

Revenues, §50-1033.

Self supporting projects required, §50-1030.

Supervision, §50-1031.

Use, §50-1033.

Sale of surplus water, §50-1030.

Subdivisions.

Plans and specifications of water and sewage systems.

Submission to department of environmental quality, §§50-1326, 50-1329.

Water systems encompassed by plats.

Certification, §50-1334.

Powers of city as to, §50-1030.**WEAPONS.****Common carriers.**

Municipal corporations.

Powers as to concealed weapons, §50-308.

Municipal corporations.

Concealed weapons.

Powers as to carrying of concealed weapons, §50-308.

WILLS.**Unincorporated nonprofit associations.**

Legatees or devisees, §53-704.

WITNESSES.**Housing authorities.**

Powers as to witnesses, §50-1904.

Municipal corporations.

Council.

Compelling attendance, §50-216.

Z**ZONING.****Housing authorities.**

Municipal corporations.

Housing projects subject to zoning laws, §50-1915.

